Supreme Court, U. S.
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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-444

NORTHEAST MARINE TERMINAL COMPANY, INC. AND STATE INSURANCE FUND,
Petitioners,

v.

RALPH CAPUTO

AND

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR
Respondents.

No. 76-454

INTERNATIONAL TERMINAL OPERATING CO., INC.
Petitioner,

v.

CARMELO BLUNDO

AND

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR WRITS OF CERTIORARI FILED SEPTEMBER 24, 1976 AND SEPTEMBER 28, 1976, CERTIORARI GRANTED DECEMBER 6, 1976

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APPENDIX A

U.S. DEPARTMENT OF LABOR
Office of Administrative Law Judges

Case No. 75-LHCA-20

In the Matter of the Claim for Compensation under the Longshoremen's and Harbor Workers' Compensation Act

RALPH CAPUTO,
Claimant

against

NORTHEAST MARINE TERMINAL CO.,
Employer

STATE INSURANCE FUND,
Carrier.

Room 208,
26 Federal Plaza,
New York, New York.

Wednesday, October 23, 1974.

The hearing in the above-entitled matter was convened at 10:18 a.m., before THOMAS F. HOWDER, Administrative Law Judges, presiding.

APPEARANCES:

On behalf of the Claimant:

ANGELO C. GUCCIARDO, ESQ., Israel, Adler, Ronca & Gucciardo, 160 Broadway, New York, New York 10038.

On behalf of the Employer/Carrier:

WILLIAM M. KIMBALL, ESQ., 25 Broadway, New York, New York 10004.

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[3] PROCEEDINGS

JUDGE HOWDER: This is a hearing in the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act, in the case of Ralph Caputo versus Northeast Marine Terminal Company, with State Insurance Fund being the insurance carrier.

This is Case No. 75-LHCA-20, formerly Case No. 2-30240.

I am Thomas F. Howder, the Administrative Law Judge.

I would like to ask counsel to identify themselves for the record.

MR. GUCCIARDO: Angelo C. Gucciardo, of the firm of Israel, Adler, Ronca & Gucciardo, 160 Broadway, New York, New York 10038. Telephone number: 212-227-1350.

JUDGE HOWDER: Counsel for respondent?

MR. KIMBALL: William M. Kimball, 25 Broadway, New York, New York 10004.

JUDGE HOWDER: This hearing is being held pursuant to notice issued August 20th, 1974. Counsel are advised that any papers, documents or exhibits previously submitted to or filed with the Deputy Commissioner are not a part of the record at this point.

I would like to inquire of counsel whether they have been able to come to any agreement respecting any of [4] the matters in this proceeding?

MR. KIMBALL: We have, and we would like to state our stipulations on the record at some appropriate time.

JUDGE HOWDER: Yes, I would like to hear those now. Which counsel would like to recite those stipulations?

MR. KIMBALL: It makes no difference. I can go ahead and recite them right here.

JUDGE HOWDER: Is that agreeable with you, Mr. Gucciardo?

MR. GUCCIARDO: Yes, it is, and if it is something that I believe not to be correct, I will voice my objection immediately, Your Honor.

MR. KIMBALL: Quite appropriate.

We have stipulated, not necessarily in any significant order, the following, subject to any possible correction or modification by Mr. Gucciardo:

That this claimant's average weekly wage was $305.20; that timely notice of the accident was given; that the claimant was injured in this accident within the course of his employment; that the employer is insured for coverage under the Longshoremen's and Harbor Workers' Compensation Act.

The accident date was April 16, 1973. The claimant was temporarily totally disabled from the accident date through May 6, 1973.

MR. GUCCIARDO: And in the event that you find in [5] favor of the claimant, the award should run from April 17, 1973, to May the 6th, 1973, inclusive.

MR. KIMBALL: Agreed. That the claimant returned to work on May 7th, 1973; that the employer has paid $266 compensation under the New York State Workmen's Compensation Act for the entire period of temporary total disability.

JUDGE HOWDER: What is that amount again?

MR. KIMBALL: $266 for which amount the employer is entitled to be credited in the event these proceedings are determined adversely to the employer.

It is agreed that the claimant will be examined for possible schedule loss within the next two, three weeks, following which examinations there will either be an agreement as to the amount of the schedule or the reports of the respective physicians will be submitted for a determination of the amount of the schedule in the event the parties cannot agree.

The possibility of failure to agree, I think is quite unlikely, would you think that, Mr. Gucciardo?

MR. GUCCIARDO: That is so, and it is further stipulated that Mr. Goldstein and myself will undertake these negotiations and advise you directly.

MR. KIMBALL: That is preferred by me.

JUDGE HOWDER: Within two to three weeks.

MR. GUCCIARDO: Yes, sir.

[6] MR. KIMBALL: It is agreed that what I inaccurately call a chart, which is more appropriately a map, is to be received as Respondent's Exhibit 1—I will ask that it be marked in a moment—and it is agreed that Respondent's Exhibit 1 is accurate, it is to scale, and it shows by markings on the upper lefthand corner, the approximate place where the accident occurred.

At the time of the accident, the claimant was employed by Northeast Marine Terminal Company, Inc. He was employed on that date in a category which is called extra labor/freight handler. He was loading cargo inside the truck of a consignee. The truck was located within the terminal area, as shown on this map, Respondent's Exhibit 1. The terminal area was leased by Northeast Marine Terminal Company, Inc., the employer, from the City of New York.

The cargo which the claimant was loading in the truck at the time of the accident had been discharged from a Yugoslav ship, the ALEXANDER, five days prior to the accident date, and during the five days, of course, had been stored on the terminal.

At this time I would like to ask that the map be received as Respondent's Exhibit 1.

JUDGE HOWDER: Is there any objection to that, Mr. Gucciardo?

MR. GUCCIARDO: No. I concur in the stipulations [7] as recited by counsel, and perhaps if you will permit us an additional whisper, we may be able to stipulate to one more thing.

JUDGE HOWDER: All right, let us mark it Respondent's Exhibit 1, and it will be received in evidence.

[The map referred to was marked Respondent's Exhibit No. 1 and received in evidence.]

[Discussion off the record.]

JUDGE HOWDER: Counsel for respondent has informed me that he has no problem with the issue of the claim being timely filed.

Before you begin, I would like to know precisely what was the injury?

MR. GUCCIARDO: The injury was, I believe, to the back and the left foot. It is primarily a left foot injury that we are concerned with.

There is no claim, really, to the back. The claimant says it was very minor. But there was a fracture in the great toe and in the general area of the forefoot.

JUDGE HOWDER: You may proceed.

MR. KIMBALL: That is not stipulated to, of course. We think the injury was to the left great toe. That is what our file indicates, but this will all be resolved within the next two or three weeks, hopefully, to your satisfaction.

[8] JUDGE HOWDER: Thank you.

MR. GUCCIARDO: We would like to stipulate further, Your Honor, that at this particular terminal area, which is commonly known as 39th Street, that the only cargo handled there is cargo received from various shippers throughout the country and destined for another port, or cargo unloaded from vessels and then destined for various consignees who have imported the merchandise either from this country, a local port, or a foreign port.

All of the cargo handled either is going on board a vessel or has come from a vessel.

MR. KIMBALL: As best I understand it, that is also stipulated.

JUDGE HOWDER: The 39th Street is here in Manhattan?

MR. GUCCIARDO: It is in Brooklyn, Your Honor, and the body of water is the Gowanus Bay, which is a navigable water. I think counsel will stipulate to it.

MR. KIMBALL: No question about it.

JUDGE HOWDER: Do either of you have anything more to say at this point?

MR. GUCCIARDO: No, Your Honor.

JUDGE HOWDER: Counsel for the claimant, how would you like to proceed?

MR. GUCCIARDO: I would like the claimant to testify, and even though some of the questions I may ask have [9] been stipulated, if counsel will permit me, just so we get the continuity of the record.

Mr. Caputo.

Thereupon,

RALPH CAPUTO,

the claimant, was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GUCCIARDO:

Q Mr. Caputo, will you please give your name and address for the record?

A My name is Ralph Joseph Caputo. I live at 66 Grant Street, Staten Island, Zip Code 10301.

Q Mr. Caputo, what is your occupation?

A My occupation is a longshoreman.

MR. KIMBALL: I object to the characterization, unless it is a loose one rather than a legal one.

I suppose that is what we are here to decide, whether he is or is not a longshoreman.

JUDGE HOWDER: I agree with that, and I will let him describe his activities as being a longshoreman, in that it does not determine the legal issue.

BY MR. GUCCIARDO:

Q Mr. Caputo, as a longshoreman, where do you do your work?

[10] A Mostly in the hold of a ship, where I am naturally put at work.

Q Are you also—do you also do terminal work?

A Terminal labor work, dock work.

Q When you work on a ship, where do you work?

A Down in the hold of the ship.

Q What do you do there?

A Unload and load pallets, we do the same with nets—

Q You load and unload a vessel from the dock?

A Yes.

Q As terminal laborer, would you describe what your duties are?

A Terminal laborer consists of the job of loading trucks, discharging, loading containers, also lighters and barges.

Sometimes, if it is necessary, they put you on the ship, which consists of ship labor, if they need you.

Q Well, when you are used as ship laborer, what do you mean by that?

A Ship laborer consists of loading for the crew and laundry.

Q Is that commonly known as ship stores?

A Yes.

Q You said as terminal laborer you worked on lighters [11] and barges. Are you using the same words interchangeably? Does it mean the same to you?

A A lighter is a closed one, and a barge is an open one.

Q As terminal laborer, what do you have to do with these barges and lighters?

A Sometimes we have to discharge them and sometimes you have to load them.

Q When you discharge them or load them, are they afloat adjacent to the dock area?

A They are on the water, and they are tied to the string piece.

Q And whether you are working as a terminal laborer or working on the hold of a ship or loading ship stores, or doing lighter work, what is that all called, as far as you are concerned?

A It consists of work as a longshoreman.

Q Are you a member of a union?

A Yes, sir.

Q What union?

A Local 1814.

Q What is the union called? Is it the International Longshoremen's Association?

A Yes.

Q And are all of the workers, whether they be hold [12] workers, terminal laborers, checkers, or lighter workers—

A They all belong to that local.

Q All belong to the—

A 1814.

Q —the Longshoremen's Union, regardless of what local?

A Yes.

Q How long have you been so employed, did you say, for the record?

A I have been a longshoreman since 1947.

Q And since 1947—are you still employed as a longshoreman?

A That is right.

Q From 1947 up to the present time, the activity that you have just described, that is working as terminal laborer, working on lighters and working in the hold of a vessel, is that essentially what you do?

A That is it.

Q Do you do this work for various stevedoring companies?

A Stevedoring companies.

Q Is this essentially what is known as a Shape job?

A It is considered a Shape job when there is no job at your regular pier.

Q Well, does a Shape job mean that you go to a hiring [13] hall and you are hired out wherever work is available throughout New York-New Jersey area?

A We have one at 16th Street in Brooklyn.

Q Are you a regular member of a gang?

A I am a regular member of a gang. The gang number is 801.

Q Where do you work normally?

A Normally on the dock.

Q What company?

A If it is necessary for me to go down in the hold at times, if there are men down in the hold, we are compelled to go down. Because we are never allowed to let men work shore—

JUDGE HOWDER: Which company do you work for?

THE WITNESS: Pittston Stevedoring.

BY MR. GUCCIARDO:

Q Now, is a gang that unit of workmen commonly used to load and unload a vessel?

A There is supposed to be eight men down in the hold.

Q Just answer the question. Does the gang load or unload the vessel?

A Right.

MR. KIMBALL: I want the record to reflect I thought we stipulated to obviate some testimony, and I was hoping that Mr. Gucciardo would get into something that I [14] at least would consider relevant.

I don't think it makes any difference what this fellow does most of the time of his life, even if this were the only day in his whole life that he had done what he was doing at the time of the accident. That is the only thing material before this court.

In other words, he could be a longshoreman working on ships 364 days a year, but if you are injured on the 365th day while repairing watches in the center of Manhattan, the question of whether he was entitled to benefit under the Longshoremen Act would be: What was he doing at the time of the accident? Not what had he done 364 other days of the year.

So I believe that all of the testimony thus far elicited is totally irrelevant to the issue which is presented before this tribunal.

JUDGE HOWDER: I understand your point.

However, I am going to let Mr. Gucciardo develop his general duties. I have your point well in mind, believe me.

How old are you?

THE WITNESS: Fifty-seven.

BY MR. GUCCIARDO:

Q Does the gang load or unload the vessel?

A Yes, sir.

[15] Q And as such, are some men in the hold, some men on the dock, and some men on the string piece of the dock—I meant deck before when I said dock.

A Yes.

Q You are normally what—

MR. KIMBALL: We are going to have testimony which I consider totally irrelevant, unless it is going in one judicial ear and out the other. It threatens to prejudice my client.

Therefore, I respectfully ask that it at least be elicited by non-leading questions.

So I object to the form of the questions being used to elicit what I consider to be prejudicial, irrelevant testimony.

MR. GUCCIARDO: May I be permitted to answer that point?

JUDGE HOWDER: Yes, you may.

MR. GUCCIARDO: We are not bound by the strict rules of evidence here, and the Act specifically refers to longshoremen.

I have a right to develop the record as to what longshoremen do all over the terminal, as well as the ships on which they work.

Counsel is here for the specific reason of taking this case completely up on appeal to the highest court, if [16] necessary. And under the circumstances, since we are all well aware of what is going to happen to this case, I respectfully submit to Your Honor that you allow the widest latitude in developing the record.

JUDGE HOWDER: In these judicial cases, and I have heard several of them, none in New York necessarily, I like to have a broad record.

I like both counsel to have an opportunity to develop their cases in the record to the extent that they think is material. I realize that some of these cases are on appeal, and that is why I told Mr. Kimball at this point I will let you develop whatever you consider—

MR. KIMBALL: In so far as there may be a credibility issue and I have just been handed a piece of paper which causes me to believe that perhaps there may, Your Honor is disadvantaged in determining credibility if all of the testimony comes in the questions.

Mr. Gucciardo is no doubt an expert in these matters, but you want to know presumably what this witness is going to testify to.

JUDGE HOWDER: I think you have a valid point.

I have noticed the questions have been leading, and so let us stay away from those. This is an administra-

tive hearing, and I do give some latitude there, but I think Mr. Kimball's point is valid. I wish you would stay [17] away from that.

MR. GUCCIARDO: I will, Your Honor, although we both know what the duties of a longshoreman are. We could almost stipulate for the record.

I'm sure I would accept his determination of what a gang worker does or does not do.

MR. KIMBALL: Do you want to accept my stipulation that checkers do not belong to 1814 of the ILA?

MR. GUCCIARDO: I will accept that stipulation, except they do belong to the Longshoremen's Union under a different number. Checkers have their own local.

JUDGE HOWDER: Well, let us not testify.

I would like to get out for the record what this witness's duties are, and let us be careful of the form of the questions.

MR. GUCCIARDO: Okay, I will, Your Honor.

BY MR. GUCCIARDO:

Q What specifically do you do on the dock as a member of the gang?

A If it is a loading of the ship, we hook up the pallets and send them down to the hold of the ship. When they come out empty, we have to unload them. In the discharge of a ship, sometimes we discharge cargo by pallets, which consist of two extra men on the dock going down below the cargo. But if it goes in by—if it comes [18] out by nets, we will have to have six men on the dock, sometimes you have eight men, and we use hooks to take the cargo from the net and we palletize the cargo in the pallets.

Q And by what mechanism is this pallet taken on the vessel or discharged from the vessel, as the case may be?

A As soon as we—you see, the cargo comes out of various—

Q Let me interrupt you, Mr. Caputo. By what mechanism is the pallet taken from the dock and put on the ship, and vice versa?

A By the boom of the ship, the ship's cable.

Q Ship's equipment?

A Yes.

Q Now, when there is no work for you in your regular gang, how do you obtain work?

A I obtain work by going up to the hiring center at Sixth Street and Third Avenue in Brooklyn.

Q Who maintains this hiring center?

A It is run by the Waterfront Commission.

Q Are all of the men who work on the waterfront required to go to this hiring hall in order to be hired?

A Just longshoremen and carpenters at the hiring center.

Q When you say carpenters—

A That is right.

[19] Q What do carpenters do in relation to vessels?

A As far as lashing cargo on the ship.

Q The cargo that you load in the ship?

A In the ship.

Q Who hires you in the hiring hall?

A Hired agent. [sic]

Q Who does the hiring agent work for?

A The hiring agent works for the various stevedores.

Q Now, on April the 16th, 1973, did you go to the hiring hall in order to obtain work?

A To get a day's work.

Q Who hired you?

A The hiring agent, by the name of Tommy Costa.

Q C-o-s-t-a?

A C-o-s-t-a.

Q Now, what did he specifically hire you for on that particular day?

A He hired me as a terminal labor man.

Q Now, when there is no work for you on board a vessel, can you go work in another dock—at another dock and work on board a vessel?

A You can.

Q And who—let us assume for the moment that you are going to work at 39th Street, where you were injured on board a vessel, who would hire you there?

[20] A The same hiring agent, by the name of Tommy Costa.

Q Are you aware of the fact that there are two operating companies at 39th Street in Brooklyn?

A Yes.

MR. KIMBALL: Object to the form of the question.

MR. GUCCIARDO: Withdrawn.

BY MR. GUCCIARDO:

Q How many companies have you worked for at 39th Street in Brooklyn?

A Two companies.

Q What's the names?

A Northeast Marine Company and Northeast Stevedore Company.

MR. GUCCIARDO: Will counsel stipulate that it is Northeast Marine Terminal Company and Northeast Stevedoring Company?

MR. KIMBALL: I will stipulate to the date by Northeast Marine.

MR. GUCCIARDO: Northeast Marine Stevedoring Company as the other company?

MR. KIMBALL: I do not know anything with respect to the other company by this man.

JUDGE HOWDER: What was that name again?

THE WITNESS: Northeast Marine and the other one is Northeast Stevedoring Company.

[21] JUDGE HOWDER: Is that correct?

MR. GUCCIARDO: Stevedoring Company, Inc.

JUDGE HOWDER: Let the record reflect that fact.

THE WITNESS: If you work on the ship, you get paid by one; if you work for terminal labor, you get paid by another one.

BY MR. GUCCIARDO:

Q Now, as far as the personnel in charge of Northeast Marine Terminal and Northeast Stevedoring Company, Inc., is there any difference?

A No, they are the same.

MR. KIMBALL: Objection, the witness could not possibly know the answer to that question.

JUDGE HOWDER: Let us see if he does.

THE WITNESS: They are the same.

BY MR. GUCCIARDO:

Q Is the president the same of Northeast as he is for Northeast Stevedoring, as well as Northeast Marine?

MR. KIMBALL: Objection. You might as well ask him to do logarithms in his head.

MR. GUCCIARDO: Either he knows or he doesn't know.

There is no need for an objection for every single question along these lines.

MR. KIMBALL: Can we ask if he knows who the [22] president is, or if he had talks with him?

JUDGE HOWDER: I don't know, either.

I will let him say of his own knowledge. If he doesn't know, he doesn't know. It is as simple as that.

MR. KIMBALL: I respectfully submit that to ask him without some foundation question is to call for his opinion or conclusion, most probably rehearsed with him by counsel.

So we are not getting what he knows. We are getting what he is being told to testify to, unless we have some foundation questions.

MR. GUCCIARDO: Object to counsel indicating in the record what I spoke with my client about and move that it be stricken from the record.

JUDGE HOWDER: We won't strike it, but disregard it.

Now, I would like to inquire of Mr. Kimball, these questions to me seem relatively innocuous. I don't know the foundation of your objection.

Why do you object to this line?

MR. KIMBALL: I submit they are irrelevant to these proceedings, first off. But apparently the questioning attorney thinks they have some relevancy and accordingly I am bound by your decision to treat them with some seriousness.

If you wish to advise me in advance that you are going to give them no weight at all, why, I suppose we can [23] let him elicit almost anything he wants to by leading questions, seeking opinion testimony.

JUDGE HOWDER: My policy is to develop a broad record in jurisdictional cases and then after it is all in, I assign it appropriate weight to matters at hand there. That is the way I will approach this line of questioning.

MR. KIMBALL: Apparently counsel is seeking to establish for some purpose that the president of two companies, which have different functions at a facility inaccurately called 39th Street Terminal, have the same president. I say, so what?

JUDGE HOWDER: I may "so what" too—

MR. KIMBALL: How—

JUDGE HOWDER: Don't interrupt me.

MR. KIMBALL: I didn't intentionally interrupt you.

I had not completed my own thoughts on the matter. If you wish to put a thought in now, it is your absolute right to do so. But I will not intentionally interrupt the court, nor be in any manner be rude to the court; but I will, to the extent permitted, attempt to articulate my thinking for the benefit of my client to the 100 percent best of my abilities.

That is my sole function here.

JUDGE HOWDER: All right. I understand that.

[24] Mr. Gucciardo?

MR. GUCCIARDO: I have a request to make.

In view of the articulation of counsel, that he either object and specifically state his objection, and not go into long dissertations as to the reasoning and get in by inference in his own statements, which don't belong in the record.

JUDGE HOWDER: All right, let us abandon this quibbling and just proceed.

You ask your questions, and I understand you have serious objections to them.

MR. KIMBALL: I do, sir.

JUDGE HOWDER: And I certainly will entertain them and assign them the appropriate weight.

Mr. Gucciardo, please proceed.

MR. GUCCIARDO: Yes, and if you will entertain a motion at this time.

I move at this time that the minutes in the case of Gasper Scalmato vs. Northeast Marine Terminal, Case No. 74-LHCA-203, specifically referring to a witness produced under subpoena of the State Insurance Fund, a Mr. Chertoff, C-h-e-r-t-o-f-f, relating to terminal labor and relating to the officers and employees of both Northeast Marine Terminal and Northeast Stevedoring Company, Incorporated, be made a part of this record.

[25] MR. KIMBALL: I oppose the application.

MR. GUCCIARDO: That was a case of Scalmato which was recently decided by Judge Miller, and it also involved terminal labor and this fact of the officers and employees of Northeast Marine and Northeast Stevedoring was gone into in detail, and the application for insurance showed that the same officers and so forth, and I think we can eliminate a lot of testimony if we—if you will accept those minutes in evidence.

MR. KIMBALL: Let me just make one other remark and then, of course, we will get Your Honor's ruling.

We are here for a very simple thing; that is, to obtain Your Honor's decision as to whether this claimant is jurisdictionally within the scope of the Act.

It may be even if one or the other of the parties is dissatisfied with your determination, and I have no reason at this moment to believe that I will or will not be, and—an appeal will be taken, and I accept that totally from you.

Wouldn't it be a shame if one party, my employer or client, had to take an appeal from this determination on constitutional grounds, because it was denied due process of law, because somebody put in evidence some sort of a record in some other proceeding which I know nothing about, some State Insurance Fund personality came in here and may or may not have testified to certain things, totally without [26] any binding effect whatsoever upon my client, and were it received I do believe that it would transgress fundamental constitutional guarantees.

So I respectfully suggest that the application by Mr. Gucciardo be denied, if for no other reason, on that grounds. It is a simple case. It ought to be kept simple.

JUDGE HOWDER: Mr. Gucciardo, what precisely is that again?

Will you tell me what that is again, that document?

MR. GUCCIARDO: Well, I am only reading from the director's brief in that particular case, because I happen to have it with me, and it identified the case. But it is a case wherein I represented Gasper Scalmato against Northeast Marine Terminal.

JUDGE HOWDER: Is this a matter of public record?

MR. GUCCIARDO: Yes, but I don't have the minutes with me, except that I can obtain them and submit it to Your Honor for your edification.

JUDGE HOWDER: Well, I would prefer to do it that way.

Why don't we, when we adjourn this hearing, make a motion, post-hearing motion, in that respect?

MR. GUCCIARDO: I will renew my motion at that time.

JUDGE HOWDER: We will give Mr. Kimball the right to oppose that motion, and I don't know whether I will [27] accept it or reject it.

MR. GUCCIARDO: Then I will have to follow this line of questioning, if you will allow me.

JUDGE HOWDER: What do you think the materiality of the questioning is?

MR. GUCCIARDO: Under the Longshore Act, it says specifically longshoremen and longshore activities.

I am trying to show that this man, as a longshoreman in his activities, be he terminal labor or be he ship labor, is covered within the meaning of the Act, and the mere fact that they have two companies, for whatever purposes they see fit to have these two companies, for all intents and purposes it is one company operated by the same men, except that when the men go on the ship they put them on the stevedoring company payroll, and when the men work on terminal labor, they put them on the marine company payroll.

I say that if the men are the same, the timekeeper is the same, the hiring boss is the same, the pier superintended is the same, the safety man is the same, then we are piercing the corporate veil to that extent, and the operation should be considered a single operation as far as this claimant is concerned, and as far as interpreting the Act is concerned.

JUDGE HOWDER: This is your position and you would like to document that?

[28] MR. GUCCIARDO: Yes, sir.

JUDGE HOWDER: I will allow you to do that.

MR. GUCCIARDO: Thank you.

BY MR. GUCCIARDO:

Q Now, Mr. Caputo, whether you work for Northeast Marine or Northeast Stevedoring, is the pier superintendent one and the same?

MR. KIMBALL: Objection.

JUDGE HOWDER: I understand you have a continuing objection on this line.

MR. KIMBALL: On multiple grounds, that it is irrelevant to these proceedings and that this witness is incompetent to give the testimony which he is being asked to, and from his mouth it is an opinion or conclusion by him without necessary foundation having been laid that he knows what he is reciting.

JUDGE HOWDER: I understand that.

You may proceed, Mr. Gucciardo.

BY MR. GUCCIARDO:

Q Would you answer the question, Mr. Caputo? Is the pier superintendent the same for Northeast Marine as it is for Northeast Stevedoring Company?

A The only answer I have for that question is that for the Northeast Stevedoring, Pete Spannow is for the ship; the other gentleman was for the terminal labor, is Joe [29] Piganno. He died about two months ago.

Q Who is the pier superintendent?

A The pier superintendent, no one knows that. It is the labor boss.

Q The labor boss?

A Yes, and Pete Spannow, he is the supervisor on the ships.

Q There is such a thing as ship foreman?

A Yes.

Q And there is such a thing as terminal labor foreman?

A Yes.

Q And then there is a pier superintendent?

A Superintendent on the ship, a gentleman by the name of Mr. Walsh and Mr. Viola.

Q Do these—Mr. Walsh and Mr. Viola, do they work for both companies?

A That I couldn't answer.

MR. KIMBALL: Objection, Your Honor, that is so flagrant. Move to strike whatever he said. How would he know?

BY MR. GUCCIARDO:

Q How long have you worked for Northeast Marine and Northeast Stevedoring Company?

A On and off in the last twenty years.

Q Do you know who the foremen are and the bosses are, [30] generally?

MR. KIMBALL: Objection.

THE WITNESS: The same one during the last—more or less during the last twenty years.

BY MR. GUCCIARDO:

Q Have they been the same, more or less, within the last twenty years as well as on the date of your accident?

A Yes.

Q Now, when you were hired, you said you were hired by, I believe it was, Tommy or Tony Costa?

A Tommy Costa.

Q Who is he—I don't know if you stated that for the record. Was he the hiring agent?

A That is right.

Q After you are hired by the hiring agent at the hall, what do you do?

A Go directly down to the pier, to the timekeeper to report.

Q Is this the same timekeeper for Northeast Marine Terminal as Northeast Stevedoring?

A The same one.

Q You checked in with the timekeeper?

A You check in with the timekeeper and he tells you to see the labor boss.

Q Who was the labor boss?

[31] A At that time it was Tommy Googan.

Q Did you report to him?

A I approached him. He assigns you to your position.

Q Where did he assign you that day?

A That particular day he assigned me to trucks.

Q What does that mean specifically, assigned you to trucks? What do you do?

A Loading trucks.

Q What do you load them with?

A We take the cargo off the pallet. The machine brings it to the tail of the truck and we use a dolly to bring it all the way in.

Q Are you finished?

A In case there is another piece, process of loading or unloading the trucks, they have a platform. When there is no room on the platform, you have to use a dolly. That is the only time it is necessary for you to load a truck when the platform is already full.

Q This cargo that you are loading the truck with, where does it come from?

MR. KIMBALL: Objection.

THE WITNESS: From Yugoslavia.

JUDGE HOWDER: One moment now.

Have we established the general duties sufficiently in the record for your purposes?

[32] MR. GUCCIARDO: Not yet, Your Honor. I will get to it.

JUDGE HOWDER: I would like you to finish up with this line and move in on what he was doing the particular day when the accident occurred.

MR. GUCCIARDO: Okay.

BY MR. GUCCIARDO:

Q This cargo, where did you say it came from, the Yugoslav ship?

A Yes.

Q Now, as far as you know, is all of the cargo in that terminal—I am sorry, I think you stipulated to that, so I don't have to go into that point.

Mr. Kimball, is that correct? That all the cargo on that pier either comes off a vessel or is going on a vessel?

MR. KIMBALL: That is true.

MR. GUCCIARDO: All right, I will skip that.

BY MR. GUCCIARDO:

Q When you are assigned as terminal laborer, if your truck work of loading the truck is finished, could you be assigned to unloading a lighter if there is a lighter available?

A Yes.

MR. KIMBALL: Objection.

[33] BY MR. GUCCIARDO:

Q Could you also be assigned to loading ship stores?

MR. KIMBALL: Objection.

THE WITNESS: Yes, sir.

BY MR. GUCCIARDO:

Q Have you ever loaded ship stores for this particular Northeast Marine Company?

A Yes, sir.

Q How many times would you say you have loaded ship stores for this company?

A I average around seven times.

Q What do you mean seven times, over what period of time?

A Within a period of about seven to ten years.

Q When you load ship stores, what do you do specifically? Will you advise the Judge?

A Well, the ship stores, we bring the cargo to the storerooms.

Q On board a ship?

A On board ship.

Q And you take the cargo from where, the dock?

A From the dock.

Q Now, if your assigned work of loading a truck is finished, can you also be assigned to a lighter?

A Certainly.

[34] MR. KIMBALL: Objection.

BY MR. GUCCIARDO:

Q What would you do on the lighter?

MR. KIMBALL: Objection, hypothetical.

THE WITNESS: You have to load the lighter: sometimes you have to discharge the lighter.

JUDGE HOWDER: Is this hypothetical or has it occurred in his experience before?

MR. GUCCIARDO: I will come to that. It is not hypothetical. That is why I object to counsel testifying, by his objections.

JUDGE HOWDER: Let us not get into that.

BY MR. GUCCIARDO:

Q Have you loaded and unloaded lighters that were afloat in the Gowanus Bay at Pier 39th Street in Brooklyn Terminal for Northeast Marine?

A Yes, sir.

Q You said you worked for Northeast Marine some twenty years?

A That is right, on and off.

Q Could you tell us, on a percentage basis, what percentage of your time you actually work on barges or lighters that are afloat or loading ship stores, as compared to work done physically on the dock?

MR. KIMBALL: Your Honor has in mind, of course, [35] my objection to the relevancy of this testimony?

JUDGE HOWDER: Yes, I do, and I will give it very serious consideration.

BY MR. GUCCIARDO:

Q Will you answer the question, please?

A I believe about twenty percent.

Q Twenty percent what? On the ship or on the dock? On the barges or on the dock?

A On the lighters.

Q On the lighters. Now, on the day that you were injured, April 16, 1973, were you physically located within the terminal area commonly known as 39th Street, Brooklyn?

MR. KIMBALL: That has been stipulated.

We have a stipulation which I think even Mr. Justice Cardozo has characterized as the highest form of proof.

Now, a question which elicits testimony from this witness about which we have already stipulated, I don't know how to deal with.

Suppose he testified something contrary to the sipulation, then where are we? We either have stipulations or forget about testimony in that area. I don't want it both ways, because it makes me nervous.

JUDGE HOWDER: Mr. Kimball, has he testified contrary to your knowedge so far?

[36] MR. KIMBALL: Not at the moment.

JUDGE HOWDER: Now, it is not your purpose to elicit contrary information?

MR. GUCCIARDO: No, I stated in the beginning that I may ask questions that have already been stipulated only to get the continuity, and there was no objection at that time.

JUDGE HOWDER: Would you accept the stipulation over his objection if it was at variance?

MR. GUCCIARDO: Yes, I would accept the stipulation.

MR. KIMBALL: The way to handle that, that is one of the few areas where leading on direct is entirely permissible.

When he starts off and states "it has been stipulated", blah, blah, blah, and then you work on from there, rather than risk asking the witness a question which might elicit testimony contrary to a stipulation.

JUDGE HOWDER: Is that agreeable to you?

MR. GUCCIARDO: Certainly it is, but I am being careful. No matter how I twist and turn.

Now he wants me to do it, so I don't know how I stand.

JUDGE HOWDER: That is neither here nor there.

I want the record to be clear on the point that [37] you make. It has been stipulated, and I will accept that.

I would ask you to be careful in asking questions in this area.

BY MR. GUCCIARDO:

Q Do you know who owned this truck that you were loading?

A Tomaselli Brothers.

Q They had nothing to do with Northeast Marine, as far as you know?

A No.

Q Was the truck physically located within the terminal area when you were injured that—

MR. KIMBALL: That has been stipulated, and it was shown on Respondent's Exhibit 1.

MR. GUCCIARDO: The question is withdrawn.

JUDGE HOWDER: The question is withdrawn.

BY MR. GUCCIARDO:

Q Now, will you state briefly what you were doing when the accident happened, and how it occurred?

A My checker called me and told me to go out to the Tomaselli truck—

Q Let me interrupt you a minute. What is the function of a checker?

A A checker, he is a man who checks the cargo, counts how many pieces are on the pallet that goes inside [38]

the truck. They bring it to the truck, and in doing so the driver and I waited. The first draft came to the truck and the driver and I were standing by the pallet, and in doi-g so we got a clearance of the dolly, and he told him to put the load down on the dolly, and in doing so—

Q The machine driver is a hi-lo driver?

A Hi-lo driver.

Q Is he lifting the pallet, the draft?

A The draft that landed on the dolly. Now, at times we have to ask the machine driver to give us a little push. Sometimes the trailer is forty-foot, sometimes they are 45-foot. So we told the driver, and he says, All right, I will give you a push. He gave us a push, and he was pushing the dolly down to the rear of the trailer. I happened to be on the righthand side. The driver was on the lefthand side. In doing so, I was going back, back, back, I figured that the floor was level, not knowing that there was a backstop. In doing so, I fell backwards, and in doing so my left foot went under the bottom of the dolly. My right foot was clear because there was enough space of the draft—

Q Were you injured?

A Yes, sir.

Q Did you stop work immediately?

A I stopped work immediately.

Q What time was this, about?

[39] A Roughly, I would say, between 1:30 and 2 o'clock, around that time.

Q What time had you been hired that day?

A That day I was hired between 8:30 and 8:40 a.m.

Q What had you been doing in the morning?

A Doing what I had been regularly.

Q That is, loading trucks?

A Loading trucks.

Q You went to lunch?

A Went to lunch and then had this accident.

Q Was that the first draft being put on the truck when you had the accident?

A The very first one.

Q You referred before to palletized cargo, and then you mentioned draft. Is that the same to you?

A That is terms of the language that we use.

MR. GUCCIARDO: I have nothing further.

CROSS-EXAMINATION

BY MR. KIMBALL:

Q Mr. Caputo, I understand that day you were hired out of the hall, is that correct?

A That is correct, sir.

Q And you did not regularly work at the so-called 39th Street Terminal in those days, did you?

A Not as a regular man. Extra man.

[40] Q You were what they call an extra man?

A Extra.

Q And if I heard correctly, the labor boss that day assigned you to the trucks, is that correct?

A Terminal labor.

Q And you worked trucks in the morning up until lunchtime?

A That is right, sir.

Q Then you took your lunch, is that right?

A Yes.

Q Then you came back after lunch and you went back to working trucks?

A That is right.

Q And there came a time when you were told to work the Tomaselli Brothers truck?

A That was the first job that I got when I checked in.

Q When you checked in after lunch?

A One o'clock, that is right.

Q And you had been doing the same kind of work in the morning on trucks of other companies?

A That is right, sir.

Q At the time you got hurt, you were working inside the Tomaselli Brothers truck, is that right?

A That is right, sir.

[41] Q You mentioned that you were using a dolly, is that something that you put packages on and then you push it inside of the truck?

A That is what they use when the draft comes down. There is a little object that loads it on.

Q And your job was to push the dolly inside the truck, is that correct?

A That is correct, sir.

Q On top of the dolly, were these cartons or cases?

A Cases, they were.

Q Is that right?

A Cases.

Q Now, is it true, then, what you were doing is the sort of work that has to be done inside a truck whenever they load it with a dolly?

A That is right.

Q Or, for that matter, whenever they unload it with a dolly, you have to do the same kind of work?

A That is right, sir.

Q That sort of work has to be done whether the truck is on the terminal, whether the truck is at the warehouse, whether the truck is outside the courthouse, wherever the truck is, if they are going to load it or unload it with a dolly, somebody has to do the kind of work that you were doing that day; is that right?

[42] MR. GUCCIARDO: Objection.

THE WITNESS: That is right, yes.

MR. GUCCIARDO: Excuse me, don't answer the question.

MR. KIMBALL: He has already answered yes.

MR. GUCCIARDO: There is no evidence that the truck is loaded in a courthouse or outside of the terminal, or anything like that. That is all of a figment of his imagination and has no bearing on the record.

JUDGE HOWDER: I will let the witness answer the question.

MR. GUCCIARDO: I think he already has.

What did you say your answer was?

THE WITNESS: Yes.

BY MR. KIMBALL:

Q Now, this truck was to take these goods some place, is that right?

A I didn't hear that.

Q I say, after you finished loading these trucks, then they drove out of the terminal and went some place; is that right?

A They go right out.

Q They went to deliver these goods to wherever they belonged?

A Wherever they have to go to.

[43] Q That could be any place in this area, or any place in the country?

A We are not allowed to ask where they are going. If we ask them, they are not supposed to answer.

Q When they get where they are going, then somebody has to unload those trucks, is that right?

MR. GUCCIARDO: Objection, immaterial to these issues.

THE WITNESS: Yes, sir.

JUDGE HOWDER: I will allow him. I want to give him the same—

MR. GUCCIARDO: Will you instruct the witness, when he hears me object, not to answer until you rule on it?

JUDGE HOWDER: Yes, Mr. Witness, don't answer the question until I have ruled on it.

THE WITNESS: I understand.

BY MR. KIMBALL:

Q Now, would you say that the risk of getting hurt as you did while pushing a dolly inside a truck was more, less, or about the same, regardless of whether the truck was on a terminal, whether the truck was in the street outside the court here, whether the truck was any place in New York City, to say the risk was the same, more or less?

MR. GUCCIARDO: Objection.

MR. KIMBALL: Basis?

[44] MR. GUCCIARDO: Immaterial what the degree of risk is anywhere. The fact is that the accident occurred, it has been stipulated to.

JUDGE HOWDER: There is a line of argument which I have heard several times that the Longshoremen's Act, the amendment came into being because of the high risk of injury in a longshoring area, and counsel have been making this argument in all my cases, and I think the question is somewhat hypothetical as far as the witness is concerned; but I will let him answer it to the best of his ability.

MR. GUCCIARDO: Then I will voice the objection on the grounds that he is not competent to answer what the degree of risk is and he is not trained in that field.

JUDGE HOWDER: Well, it is a matter of weight. I will let him answer the question.

You may answer the question.

BY MR. KIMBALL:

Q Would you like to have the question repeated, so that you can give it a fair answer?

A I wouldn't know.

Q You don't know the answer?

A I wouldn't know.

Q You say you would not know what?

A No, because I don't know where that truck is going to.

[45] Q Was the truck moving while you were loading it?

A No, the truck is supposed to be shut.

Q So that it cannot move?

A It cannot move. We are taking the driver's word.

Q What is the area, the surface area like, where that truck was? Is it concrete?

A Concrete area.

Q Is it sort of like a driveway in there?

A No, one big yard.

Q A big concrete yard?

A That is right, sir.

Q Is it relatively flat there, bumpy, or what would you say?

A I should say very flat, sir.

MR. GUCCIARDO: Your Honor, at this time I want to object to this line of questioning.

If it is counsel's purpose to show that there is various risks involved in different types of activities not on the waterfront, I readily stipulate to that.

JUDGE HOWDER: Would you accept that stipulation, counsel?

MR. KIMBALL: If I understand it correctly, you are prepared to stipulate with me that the work which this man was doing at the time he was injured had no risk involved peculiarly associated with longshoring; is that [46] correct?

MR. GUCCIARDO: I believe my stipulation was quite clear. All I said was that the incidence of risk may be more or less away from the waterfront than it is on the waterfront, or in the terminal area, and that various insurance companies even charge a different rate if you are unloading a truck on the street as compared to a terminal area.

It still has no bearing on these proceedings.

MR. KIMBALL: I will stipulate to the fact up to the point where you injected that it had no bearing.

I won't stipulate to that, but I will stipulate everything up to that point, if you like.

MR. GUCCIARCO: Providing you abandon the line of questioning.

MR. KIMBALL: I think that is only part of the story.

JUDGE HOWDER: Could I be clear on the record what the stipulation is?

MR. GUCCIARDO: I am withdrawing it because he doesn't want to abandon his line of questioning.

I would only stipulate to it if he abandons his line of questioning.

Go ahead.

MR. KIMBALL: You don't want to stipulate?

MR. GUCCIARDO: Come on, Mr. Kimball, we are not [47] playing games.

JUDGE HOWDER: Off the record.

[Discussion off the record.]

JUDGE HOWDER: Back on the record.

From my discussion with counsel, I understand that it is stipulated that the same witness, Mr. Caputo, doing the exact same activity in the truck would have the same risk factor of injury, whether he were doing that activity on the terminal or off the premises of the terminal; is that correct, gentlemen?

MR. GUCCIARDO: Using the same type of equipment.

JUDGE HOWDER: Using the same type of equipment. All conditions being the same.

MR. KIMBALL: That is agreeable.

MR. GUCCIARDO: Yes.

BY MR. KIMBALL:

Q Mr. Caputo, just to be clear in my mind, the equipment which you were using was a dolly, is that correct?

A Correct.

Q Would you describe the dolly a little bit for us? Was it a two-wheeled or four-wheeled dolly?

A A six-wheeled dolly, three wheels on each side.

Q Where did the dolly come from, do you know?

A The dolly?

Q Yes.

[48] A The dolly is supposed to be kept inside the terminal, laid against the wall.

Q Does the dolly have sides or completely flatbedded?

A Completely flat. There is an opening in the center. There is a narrow strip on the side where there is cast-iron wheels.

Q And the purpose of the dolly, you told me, is to land these drafts or cargo on top of it?

A That is right.

Q Then, because the dolly has wheels on it, why, you can roll the cargo?

A Pull it with a rope, yes.

Q Easier than a man could carry the cargo, it is quicker to use the dolly?

A Correct.

Q Now, after you got the dolly inside the truck, where you want it, then do you have to take the cargo off the dolly?

A That is correct.

Q And you put it into stow, so-called?

A Yes.

Q Then you go back with the dolly and get another draft?

A That is correct.

[49] Q That is the sort of work you were doing at the time you got hurt?

A Yes.

MR. KIMBALL: I have no further questions on cross at this time, Your Honor.

Well, Mr. Goldstein wants to advise me, and I need his advice, if I may, Your Honor.

JUDGE HOWDER: Certainly.

[Discussion off the record.]

BY MR. KIMBALL:

Q Let me ask you another. We are getting out of the—you have been working on the waterfront about how many years did you say?

A Twenty-eight years.

Q You say you have been working sometimes on ships and sometimes on lighters and sometimes in the terminals for the last 28 years, is that correct?

A That is correct.

Q Now, on this particular date, which is April 16, 1973, if I understand correctly, you hurt your left big toe; is that correct?

MR. GUCCIARDO: Objection, Your Honor, that is not what we are claiming. We are claiming the foot.

MR. KIMBALL: I don't care what they are claiming. I want to know what the witness's answer is.

[50] I don't believe it is appropriate for counsel to get up and advise the witness what his claim is.

MR. GUCCIARDO: Except there is a stipulation on the record that Mr. Goldstein and I would go into this and agree on it, and—

MR. KIMBALL: On the schedule.

MR. GUCCIARDO: Yes, on the schedule. Will you hold the record one moment, please?

JUDGE HOWDER: Off the record.

[Discussion off the record.]

JUDGE HOWDER: Back on the record.

MR. GUCCIARDO: May we have it indicated on the record that with respect to the previous injury sustained, we had a discussion and counsel was satisfied that—not counsel—

JUDGE HOWDER: The only injury I have on this record is the one of April 16, 1973. There is nothing on this record or there may be a prior claim.

MR. GUCCIARDO: Yes, but they are raising this in the event there is a schedule loss they are entitled to credit. It does not appear that he received any money to it, and therefore he is not entitled to any credit.

Mr. Goldstein and I will probably check this out and check whatever records are necessary and agree as to that part of the case.

[51] JUDGE HOWDER: What do you want to do as far as the present record is concerned?

MR. GUCCIARDO: Just terminate it. As per the agreement with Mr. Goldstein and myself. I don't think it goes to the merits of the claim on the basis of jurisdiction at all.

BY MR. KIMBALL:

Q Mr. Caputo, when the—whoever it was sent you over to the Tomaselli Brothers, did he send anybody along to help you?

A He only assigned one man.

Q Where was the truck driver at the time, do you know?

A The truck driver was outside the truck.

Q Now, during the morning when you were doing this same sort of work on other trucks, did they assign you alone or did they send somebody with you?

A Just me and the checker and the machine driver.

Q And during the morning, did you see any truck drivers who were doing anything in connection with the work which you were doing in the morning?

A Yes, sir.

Q What were they doing?
A Same kind of work I was doing.
Q In other words, the truck drivers, while you are doing the loading, they are also loading their own trucks?
[52] A They have to help you load the trucks.
Q They have to help you, is that right?
A Certainly.
Q So, actually, when they assign one man to a truck, you really wind up with two men doing the work, the man assigned and the driver?
A Correct.
Q So you tell me this was the very first dolly load that you had taken on the Tomaselli Brothers truck; is that correct?
A Yes, the first time.
Q But if the job had gone in the usual way, the truck driver would have been helping you finish that load?
A It would have taken a long time.
Q It was a big truck?
A Certainly.
MR. KIMBALL: No further cross-examination, Your Honor.

REDIRECT EXAMINATION

BY MR. GUCCIARDO:

Q This dolly, does it belong to Northeast Marine Terminal?
A Yes, sir.
Q Did you ever work for any stevedoring company outside of a terminal area?
[53] A No.
JUDGE HOWDER: I think that is clear in the record. We don't have to go into that.
MR. GUCCIARDO: I have nothing further.
JUDGE HOWDER: I have one or two questions I would like to ask.

What type of cargo was this, and if—
MR. GUCCIARDO: We stipulated cheese, but I am not sure.
MR. KIMBALL: There was a little doubt in Mr. Gucciardo's mind, but I think I can clear up Your Honor, because I am holding the bills of lading here.
MR. GUCCIARDO: If he says there were cheese, but he doesn't know. They were cases.
MR. KIMBALL: They were wooden boxes of cheese, Your Honor. The bill of lading indicates there was a total shipment of 1,279 cases of cheese.
Now, whether all of that shipment was going on this truck, we do not know. But that was the commodity being loaded at the time.
JUDGE HOWDER: Okay.
Mr. Caputo, how did that cargo come off the vessel?
Did it come off in a sling or a pallet? And again I want to remind you that if anything I ask is included in the stipulation, please remind me.
[54] MR. KIMBALL: He wouldn't know, because he wasn't involved in the discharge. The discharge was five days before, and he was not then employed at this facility.
JUDGE HOWDER: Now, where did you pick the cargo up first? Was it on the ground outside the truck?
THE WITNESS: No, see, the cargo is already on the pallet.
JUDGE HOWDER: On the pallet already and how far from the truck was the pallet?
THE WITNESS: Right near the truck.
JUDGE HOWDER: It had been loaded on a pallet?
THE WITNESS: Yes.
JUDGE HOWDER: And it was on the ground or on a pallet?
THE WITNESS: On the ground, and the machine driver comes over with his fork and picks it up and loads it on the dolly.

JUDGE HOWDER: A fork lift picks it up on the dolly?

THE WITNESS: That is right.

JUDGE HOWDER: At this point you came in to play and picked up the dolly and did whatever, unloaded the dolly in the truck?

THE WITNESS: Yes.

JUDGE HOWDER: Is all this clear in the record now?

MR. GUCCIARDO: Yes, but just to clarify further, [55] may I be permitted to ask one or two more questions?

JUDGE HOWDER: Very well.

BY MR. GUCCIARDO:

Q Can this pallet, that was loaded with the cheeses, be unloaded from the vessel exactly the way it was lifted by the machine?

MR. KIMBALL: That is a hypothetical.

THE WITNESS: Identically the same way.

BY MR. GUCCIARDO:

Q Is that the usual method of unloading palletized cargo from a vessel?

A Yes, sir.

Q Is it the usual method to unload it, leave it on the dock until the consignee is advised to pick it up?

A They bring it inside the terminal.

Q then what is done as far as giving notice to the consignees?

A They either put it on the location papers, they turn it into the office. When the driver comes down, that is the first thing he does.

Q Who send the driver down to pick up?

A The delivery clerk.

Q But before the driver gets on the pier, who gives him the instructions to come to the pier to pick up the cargo?

[56] JUDGE HOWDER: I wonder if he knows that.

THE WITNESS: The consignee, the owner of the merchandise.

BY MR. GUCCIARDO:

Q Do you know this of your own knowledge, that this is the procedure that is followed?

A My own knowledge, I know that.

Q Then up until the time that the consignee's truckman takes it out of the terminal, this is maintained and stored by Northeast Marine Terminal?

MR. KIMBALL: Objection, Your Honor.

THE WITNESS: That is right.

BY MR. GUCCIARDO:

Q Do you know what happens by way of charging, if the cheese remains on the pier after, say, five days or whatever the—

A They have to pay a certain charge.

Q What charge is that? Do you know what it is?

A That I could not tell you.

Q Do you know what the usual period is that they have to pay, after which they have to pay a certain charge?

A No.

MR. GUCCIARDO: Nothing further.

MR. KIMBALL: Now, I have to ask a couple, if you—Your Honor will permit.

[57] JUDGE HOWDER: Sure, go right ahead.

RECROSS-EXAMINATION

BY MR. KIMBALL:

Q You described this area where the truck was as a great big—what would you say it was, a kind of square-shaped?

A Yes.

Q And concrete-covered?

A Concrete.

Q That is the area which they used to load and unload trucks, is that correct?

A That is correct.

Q Now, you were asked a question about free time and demurrage, do you know about those things?

A Pardon?

Q I say, how do you spell demurrage?

MR. GUCCIARDO: I never used that word in my questioning.

I asked him if there was a charge made. I am not sure that he knows it.

JUDGE HOWDER: You may ask the question.

BY MR. KIMBALL:

Q Have you ever heard the word "demurrage"?

A On a pier?

Q Any place in your whole life.

[58] A No, outside of the waterfront, I never heard of it.

Q What is it, do you know?

A Demurrage is when the consignee does not come down and pick up his cargo at the proper time.

Q Have you ever had anything to do with demurrage?

A It is not my line of work.

Q Do you know anything about what the charges are, how much?

A No.

Q Or for how many days, or whether it includes Saturdays and Sundays?

A As I said before, I don't know.

Q It is not your line of work?

A It is not my line of work.

MR. KIMBALL: Thank you.

JUDGE HOWDER: I would like to ask the witness: This place where the truck was, that is not a covered area, is it?

THE WITNESS: No, it is an open area, sir.

JUDGE HOWDER: But this is a common place where trucks come to pick up their cargo?

THE WITNESS: Yes.

JUDGE HOWDER: When the cargo is stored outside?

THE WITNESS: That is right.

JUDGE HOWDER: Okay.

[59] Anybody have any further questions?

MR. GUCCIARDO: Your Honor, I think maybe you had a misconception there.

Maybe counsel will agree with me. That cargo is put in the storage shed and then taken out of the storage shed and then put on the truck.

So that the outside open area may or may not, in this particular pier, have any storage, I don't know, but that wasn't the testimony, I don't believe.

MR. KIMBALL: Your Honor, I would be prepared to stipulate, subject to Mr. Gucciardo's agreement or disagreement, and since I am doing this on the record in open court, the option is entirely his.

But I would stipulate that it is probable to a reasonable certainty that during the five days, between the time this cheese was discharged and the time that Mr. Caputo was beginning to load it into the truck, it was kept in one of the warehouses, which formed the perimeter of this open area, which I think is commonly called a yard. It is an open concrete area used for the purpose which the witness has testified.

So I will stipulate, if Mr. Gucciardo wants, that it is probable to a reasonable certainty that the cheese was kept in one or another of the buildings which are shown almost encircling the yard on the map, which Your Honor has [60] before you, Respondent's Exhibit 1.

MR. GUCCIARDO: I agree with that, and I think counsel will also stipulate that in order for this truck to get on the premises they have to go through a guard gate maintained by Northeast Marine Terminal.

MR. KIMBALL: Most assuredly, because we have security over there.

JUDGE HOWDER: Will counsel agree that after the cargo is—you say reasonably probable that it is kept in the sheds, that the cargo was then taken from the shed and deposited at the place where the truck was to receive it?

MR. KIMBALL: That would be the procedure, yes, Your Honor.

JUDGE HOWDER: I have no further questions of the witness.

You may step down. Thank you very much.

[Witness excused.]

JUDGE HOWDER: Do either counsel have any more points to make at this time?

MR. GUCCIARDO: No, Your Honor. I have no further witnesses.

MR. KIMBALL: You rest?

MR. GUCCIARDO: I rest if that is the way you want it.

MR. KIMBALL: Both sides rest, Your Honor. I won't [61] call any witnesses.

JUDGE HOWDER: I would like to remind counsel for claimant that should you be successful in this proceeding you must follow the procedure for asking for fees outlined in 20 CFR 702.132.

Mr. Reporter, would you please mail the copy of the transcript to the Office of Administrative Law Judges, Suite 720, 1111 Twentieth Street, Northwest, Washington, D.C. 20036.

Now, let us go off the record.

[Discussion off the record.]

JUDGE HOWDER: Back on the record.

I have set the date of December the 2nd, 1974, as the date on which I would like to receive the briefs of the parties in this matter, and I have requested that each of them serve a copy of their briefs on the Associate Solicitor for Employee Benefits of the Department of Labor.

Did you have something further, Mr. Gucciardo?

MR. GUCCIARDO: I would like to make closing argument. I may, under the circumstances, since no controverting testimony was presented, make the closing argument in lieu of the brief.

JUDGE HOWDER: Would you like to make a closing argument in lieu of the brief?

MR. GUCCIARDO: I may, under the circumstances. [62] I am wondering if you could not allow me the same thing you did yesterday, let him submit his brief first and if I want to answer it, give me five days to answer it.

JUDGE HOWDER: I think in this case I would like to receive them both simultaneously.

MR. GUCCIARDO: I still would like to make closing argument.

JUDGE HOWDER: You may do so, and would you also refer to your motion?

Let me state for the record that Mr. Gucciardo has a motion that he wants me to receive a document into evidence, and I have indicated that I would like him to make that motion in writing, to give Mr. Kimball a chance to respond to it.

Would you please identify the document again, Mr. Gucciardo?

MR. GUCCIARDO: Yes, I move that the minutes specifically referring to the trial of Gasper Scalmato Docket No. 74-LHCA-203, referring to the testimony of Mr. Chertoff, C-h-e-r-t-o-f-f, be made a part of the record

and my reason for this motion is that Mr. Chertoff is the underwriter for State Insurance Fund, and he testified with reference to the insurance policies and the interrelations of the companies involved herein, and the coverage extended and the State Insurance Fund at that time was represented by [63] counsel, Mr. Foley, and had adequate and ample opportunity to cross-examine the witness.

And I think, in view of the rules, not only the rules and regulations, but the law, that the rules of evidence do not apply and Your Honor is privileged to make any investigation that he sees fit that this should properly be made a part of the record.

JUDGE HOWDER: I would like you to make that in writing.

MR. KIMBALL: I would just like to put both the judge and the record on notice that if that document were received over my objection, I would thereupon probably move to reopen these proceedings for the purpose of eliciting additional testimony.

JUDGE HOWDER: Thank you.

Your closing argument?

MR. GUCCIARDO: Just one further statement.

May I state that two weeks ago, when the Chief Judge was down here, he suggested that we follow this procedure of submitting expert testimony that is similar in nature on the issue of jurisdiction in one hearing, and having the minutes available in another hearing, without going through the procedure of taking the testimony in the interest of expediting the cases?

JUDGE HOWDER: I wasn't here.

[64] MR. GUCCIARDO: This is precedent for what I am asking you to do and, aside from the precedent, there is valid legal reason for you to accept the motion.

JUDGE HOWDER: I will be glad to hear from you in that respect in writing, and you may make a brief closing argument.

MR. GUCCIARDO: The claimant in this case is basically a longshoreman. Longshoremen come under different categories, sub categories, that is.

There are longshoremen that work in the hold of a vessel, as you heard, and load and unload cargo from the vessel, work on the string piece, hooking and unhooking drafts; and there are longshoremen who work in the terminal area, who prepare the cargo to be loaded on the vessel and also prepare the cargo for individual delivery to the consignees.

All of these activities, be it a checker, be it a gangway man or be it a hold man, comes under the general classification of longshore work.

Prior to the amendment to the Act, the Supreme Court specifically stated that the Longshore Act could only apply to those accidents occuring on the navigable waters and in the Nacerema case—I will give you the quote in the brief; I don't, unfortunately, have it now—the Court invited Congress to change the law if that is what they [65] wanted.

Congress took that invitation up and in fact changed the law and said: including any adjoining drydock or terminal area.

Now, we come to the specific point being raised by my adversary, and that is, he says it does not make any difference what his classification is or what he does normally. It is what he is doing at the time.

I say to Your Honor, that is not an argument to be accepted. It is what a longshoreman generally does that is important, and did Congress intend to cover this particular person under those sets of facts?

It is admitted by counsel that the only cargo handled by Northeast Marine is cargo either going on board a vessel or being—or having been taken off a vessel; and all of this goes to the loading and unloading of a vessel.

You should not be constricted in making your determination that the vessel is in fact loaded when the draft is

picked up from the string piece and put into the hold of the vessel.

This is not the narrow view that was intended by Congress nor is it the view that had been decided by the courts in other cases.

I remind Your Honor that under the law, that all questions of fact or reasonable questions of fact ought to [66] be decided in favor of the claimant.

I also remind Your Honor that under section 920, the Act was intended to benefit employees who are working as longshoremen and there are certain presumptions which prevail.

There is even a presumption of jurisdiction as recited in the Eugene McMullen case by the Circuit Court within the past year.

That particular court stated that where the employer went out and got insurance for a specific purpose, then, obviously, they must have believed that they were subject to the Act or they wouldn't—would not have gotten the insurance.

The court specifically said in that case that the presumption of jurisdiction prevailed, although, admittedly, there was a case involving the Defense Base Act occurring in Africa, but under the law the Defense Base Act is administered in accordance with the terms of the Longshoremen's Compensation Act.

But what is important in that particular decision is that it created two presumptions that I have previously stated. I am very familiar with that case because I argued that case myself in the Circuit Court of Appeals.

Now, as to whether or not counsel intends to raise, whether Congress did in fact have the constitutional right [67] to legislate it, he hasn't so stated, but I have to presume that he is going to follow suit as other counsel have, representing employers in this particular case.

I don't think counsel will argue with me that longshoremen working on board a vessel come under maritime law, and the maritime law is what Congress has specifically designated to enforce under the Constitution.

There is case law, historically, which states that the loading and unloading of vessels was initially done by crewmen and with the advent of modern machinery longshoremen took over this function.

The Supreme Court has stated that for this purpose the longshoremen are considered to come within the maritime law.

The other point as to whether or not Congress can legislate on land, when it is not directly involving the water, I again refer you to Supreme Court decision, such as the Sieracki decision, wherein accidents occurred on land involving a ship—and I know this was on the issue of unseaworthiness, but the Supreme Court has stated that maritime law applies to land where longshoremen are involved.

So that on the constitutional grounds, and on the intent of the law, I would rather not see decisions which are intended to split hairs, as have been made heretofore by the Supreme Court.

[68] This Act was specifically intended, and the Senate Committee Report so states, and so does the House Committee Report so state, that it does not matter on which side of the water's edge a longshoreman is injured. It was the intention to extend the jurisdiction to all longshoremen engaged in loading or unloading a vessel.

A vessel is not truly unloaded by taking the merchandise off the vessel. There are hundreds of consignees sometimes shipping on the same vessel, that cargo has to be separated, the consignees have to be notified, and then they come and pick up the merchandise.

Northeast Marine is not in the business of warehousing. They are in the business of taking the stuff off the ship and giving it to the consignee, that is their sole business.

This is an integral part of unloading a vessel or loading a vessel, as the case may be, and all of the work done by any longeshoreman could, incidental thereto, whether it be in a truck or whether it be directly taking it from the ship, is an unloading operation and that unloading operation does not end until that truck leaves the main gate, which is maintained by the employer.

I submit that since there is no evidence but that the operation was in a manner that I have just summarized, that perhaps even a judgment right from the bench would be in [69] order.

But, in anticipation of appeals and so forth, in view of counsel, that he has been hired, I would not request that you make your determination direct from the bench, although I cannot see how any other determination can be made in the light of the Minninni decision, decided by Judge Geraghty, in the light of the Adkins decision, in the light of the Scalmato decision, and in light of the Coppollino decision.

All of these decisions that I have just mentioned are administrative law judge decisions in favor of the claimant in similar circumstances.

Thank you very much.

JUDGE HOWDER: Would you like to say something, or in your brief?

MR. KIMBALL: I hope you will excuse me, Judge, my training is to always have the last word where humanly possible.

I think it is quite so as Mr. Gucciardo has indicated, that if we could only prevail here by the number of cases which respondents have won before administrative law judges, our position is utterly hopeless.

But that is a whole nother area, which we hope we do not have to get into; namely, the pattern of adverse decisions by administrative law judges.

[70] We take this case with Your Honor de novo, as far as I am concerned, and I am confident as far as you are concerned.

JUDGE HOWDER: And you are correct.

MR. KIMBALL: It is a simple case.

We have, as Your Honor so easily recalls, a man who is helping load a truck in a yard. What happened to him, what he was doing, by stipulation, could just as easily have occurred any place else where trucks are loaded or unloaded.

The argument of the claimant's counsel, as I understand it, is: once a longshoreman, always a longshoreman. Without regard to the particular work which the man is doing on the day that he is hurt.

Of course, it does get into the area of congressional intent. We know this whole statute is based upon congressional concern for persons doing work which has a peculiar risk, peculiar to the longshore business, not peculiar to loading and unloading trucks.

One thing for sure, Congress did not intend to put stevedores and terminal operators out of business. Congress did not intend that this social legislation should be wielded like a meat axe to decimate an industry so essential to interstate and foreign commerce.

And so when one is aware, even dimly, of the practical economic effect of, as in the paint company trademark, [71] "spreading this Act around the globe", anybody knows that isn't what Congress intended.

And if the chilling effect of this legislation consequent upon over-enthusiastic application is brought to the attention of the Legislature, there isn't a doubt in the world but what there will be some chopping back of the legislation, particularly at this economic time of our development.

Who could want that, who could, truly interested in the welfare of longshoremen, could want that? I cannot imagine.

So, instead of pushing this law into the furthest possible corner and sweeping everybody under the Act, I for one am confident that after the break in time has

passed, we are going to have administrative law judges and certainly we are going to have review board decisions which say, either in so many words or by the strongest possible inference, some of the things which I have so inartistically attempted to put onto the record before Your Honor this morning.

We will file briefs at the time Your Honor has indicated.

Thank you.

JUDGE HOWDER: Thank you very much.

I am looking forward to receiving your briefs.

[72] Any further matters you would like to discuss on the record at this time?

MR. GUCCIARDO: No, Your Honor.

JUDGE HOWDER: All right.

In accordance with 702 CFR 347, until the briefs have been submitted and the transcript delivered to the Administrative Law Judge, the hearing is not officially terminated.

We will, however, stand adjourned at this time.

[Whereupon, at 12:05 p.m., the hearing was adjourned, with the above stipuation.]

APPENDIX F

GENERAL DOCKET

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

APPEAL FROM BENEFITS REVIEW BOARD

Case No. 76-4009

NORTHEAST MARINE TERMINAL COMPANY, INC.,

and

STATE INSURANCE FUND,

Petitioners,

v.

RALPH CAPUTO,

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,

Respondents.

DATE	FILINGS—PROCEEDINGS
1-16-76	Filed petition for review
1-16-76	Served copy of petition under covering letter on respondent
1-16-76	See Scheduling Order No. 1 (PC)
2-26-76	Filed record (original papers of Benefits Review Board)
2- 3-76	Filed motion for amendment of caption, Director, Office of Workers' Compensation Program (w/pfs)

DATE	FILINGS—PROCEEDINGS
2- 4-76	Filed memorandum in opposition to motion to amend the caption, petitioner (w/pfs)
2-10-76	Filed order granting motion to amend the caption
2-27-76	Filed designation of parts of the record to be included in the appendix, petitioners (w/pfs)
3-26-76	Filed stipulation (ordered) extending time to file appellant's brief to 4-7-76 and extending schedule for filing briefs of other briefs one additional week —on consent
4- 7-76	Filed brief and appendix, petitioner (State Insurance Fund) w/pfs
8- 4-76	Returned record (original papers of BRB) (& in 75-4249)
10- 4-76	Filed notice of filing petition for certiorari (SC #76-444)
12-13-76	Filed certified copy of order by Supreme Court granting petition for certiorari

APPENDIX G

TRANSCRIPT OF TESTIMONY

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF THE ADMINISTRATIVE LAW JUDGES

Case No. 75-LHCA-157
Formerly Case No. 2-31357

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act:

CARMELO BLUNDO,
Claimant,

vs.

INTERNATIONAL TERMINAL OPERATING COMPANY, INC.,
Employer,

AND

SELF-INSURED,
Carrier.

NTSB Hearing Room, 36th Floor
26 Foley Plaza
New York, New York
Wednesday, December 11, 1974

The above-entitled matter came on for hearing before the Honorable PATRICK G. GERAGHTY, Administrative Law Judge, at 9:28 o'clock, a.m.

APPEARANCES:

On behalf of the Claimant:

ANGELO C. GUCCIARDO, ESQ.
Israel, Adler, Ronce & Gucciardo
160 Broadway
New York, New York 10038

[2] On behalf of the Employer:

LEONARD J. LINDEN, ESQ.
Linden & Gallagher
20 Vesey Street
New York, New York 10007

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EXHIBITS

EXHIBITS	*MARKED*	*RECEIVED*
No. 1 and No. 2	7	—

[3] PROCEEDINGS

JUDGE GERAGHTY: The hearing will come to order, please.

This is a formal hearing de novo, in the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

It is the case of Carmelo Blundo—is that the correct pronounciation, Mr. Gucciardo?

MR. GUCCIARDO: Yes, it is.

JUDGE GERAGHTY: Carmelo Blundo, B-l-u-n-d-o-, Claimant, against International Terminal Operating Company, Inc., the Employer, and is he self-insured, Mr. Linden?

MR. LINDEN: Yes, sir.

JUDGE GERAGHTY: It is Case No. 75-LHCA-157, formerly Case No. 2-31357.

The parties are advised that this proceeding would be conducted in accordance with the provisions of the Act, the rules and regulations of the Department of Labor implementing the Act, and the appropriate sections of the Administrative Procedure Act.

I am Patrick G. Geraghty, the Administrative Law Judge designated by the Chief Administrative Law Judge, to preside at this proceeding.

Would counsel for the claimant please identify himself for the record?

[4] MR. GUCCIARDO: Angelo C. Gucciardo, of the firm of Israel, Adler, Ronce and Gucciardo, 160 Broadway, New York, New York, 10038.

MR. LINDEN: Leonard J. Linden, Linden and Gallagher, 20 Vesey Street, New York, New York, 10007, for the self-insured employer.

JUDGE GERAGHTY: Are counsel ready to proceed?

MR. GUCCIARDO: We are, Your Honor.

I would like to make a brief opening statement relative to stipulations.

JUDGE GERAGHTY: May I get to the formality part before you get to that?

The hearing is being held pursuant to notice issued the fourth day of November, 1974, setting down this matter for formal hearing at this time and place.

Counsel are advised that the decision in this matter will be based on the record made herein today and that any documents, papers or exhibits previously submitted to the Deputy Commissioner are not a part of the record at this time and that if counsel wish such papers to be made a part of the record, they will have to be reoffered.

Now, Mr. Gucciardo, are there some stipulations?

MR. GUCCIARDO: Yes, Your Honor.

There are stipulations which are essentially contained in the memorandum of conference held May 29th, 1974, [5] before John M. Gontaryk.

And as to all the essential facts contained in this memorandum, both sides agree to stipulate thereto, except to the question of jurisdiction, which is the sole question presented to Your Honor for decision.

JUDGE GERAGHTY: Just to be sure, the average wage is $257.69.

MR. LINDEN: That is right, sir.

JUDGE GERAGHTY: That is down at the bottom of the page.

MR. GUCCIARDO: I am looking on the memorandum I am about to offer into evidence.

Your Honor, $171.79 per week is the rate.

JUDGE GERAGHTY: Now, I have not had an opportunity to see the document you are referring to, Mr. Gucciardo, and I don't believe that it is possibly the same memorandum that I have.

Would counsel come to the bench so that we are sure, since this is going to be the basis of the stipulations.

Off the record.

(Discussion off the record.)

JUDGE GERAGHTY: On the record.

MR. GUCCIARDO: Your Honor, respondent and claimant jointly offer for your consideration as part of the evidence, the memorandum of conference dated May 20th, 1974, by John M. [6] Gontaryk, as well as the referral of claim to formal hearing also signed by John M. Gontaryk, Claims Examiner, for the U.S. Department of Labor.

Both exhibits are to be considered as a joint exhibit by claimant and respondent, the sole issue to be tried, as I said before, is jurisdiction.

JUDGE GERAGHTY: Mr. Linden, is that agreeable with you?

MR. LINDEN: That is correct.

Of course neither of us stipulate that the conclusions arrived at as to the jurisdiction set forth in the memorandum that has just been submitted are to be conceded by either side and further that the only claim is for the period of disability as indicated in the memorandum which is January 9, 1974, through April 15, 1974, inclusive, less two days' work.

In all respects, I believe that the memorandum is correct.

JUDGE GERAGHTY: The memorandums will be accepted as Joint Exhibits, limited to the facts and not the conclusions of the Hearing Examiner or Claims Examiner, whatever his title is, and the first typewritten document will be marked as Joint Exhibit 1.

The two-page exhibit will be marked as Joint Exhibit 2 for purposes of identification.

[7] (Whereupon, the documents above referred to were marked as Joint Exhibit No. 1 and Joint Exhibit No. 2 for identification.)

JUDGE GERAGHTY: While we are on exhibits, are there any other exhibits that either side wishes to offer?

Maybe we could dispose of all the exhibits at this point.

Do you have any, Mr. Linden?

MR. LINDEN: No, sir.

MR. GUCCIARDO: No, Your Honor.

JUDGE GERAGHTY: Are there any opening statements that either side wishes to make with respect to the issue and which I take it is jurisdictional?

MR. GUCCIARDO: I will waive opening statement, Your Honor, and reserve my statement for the closing statement.

MR. LINDEN: I would rather make closing statements.

JUDGE GERAGHTY: Do you have any witnesses, Mr. Gucciardo?

MR. GUCCIARDO: Yes.

I have the claimant.

JUDGE GERAGHTY: Would you call him?

MR. GUCCIARDO: Mr. Carmelo Blundo.

Whereupon,

CARMELO BLUNDO

[8] was called as a witness, and after having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GUCCIARDO:

Q Mr. Blundo, would you please give your name and address for the record?

A Carmelo Blundo, 839 49th Street, Brooklyn.

Q Mr. Blundo, what is your occupation?

A Checker.

Q How long have you been checker?

A Five years.

Q Do you regularly work as a checker for a particular employer?

A Yes, sir.

Q What employer?

A ITO.

Q Will you tell us for the record where you perform your duties as a checker?

A 21st Street. Mostly on 21st Street.

Q Where is 23rd Street located?

A Excuse me?

JUDGE GERAGHTY: Excuse me.

The witness is saying 21st Street and you are saying 23rd Street.

[9] THE WITNESS: 21st.

MR. GUCCIARDO: I stand corrected, I am sorry.

THE WITNESS: I work on 21st Street, which occupies 21st Street up to 19th Street.

BY MR. GUCCIARDO:

Q Is there a gate maintained in order to go into this pier area?

A Yes, there is two gates, one on 20th Street and one on 19th Street.

JUDGE GERAGHTY: Mr. Gucciardo, I don't want to interrupt, I know you are totally familiar with the area, and I am little bit because of prior hearings, but the man has only stated that he works on 21st Street, which anybody reading the record would take as just a block in the middle of the city, maybe, and I am sure you mean it as a pier.

MR. LINDEN: And I think he also said 19th to 21st Street, which is correct.

MR. GUCCIARDO: I am going to get to that, Your Honor, the gate and enclosure and so forth.

BY MR. GUCCIARDO:

Q Is there a gate maintained to these premises known as 21st Street?

A Yes, there is.

Q There is a fence around the area, too?

A There is.

[10] Q What is this, actually, 21st Street. You said you work at 21st Street, but what kind of facility?

A It is a pier.

Q Is it adjacent to navigable waters of the United States?

A Yes, it is.

Q From the entrance or the gate to the water's edge, how many feet would you say that is?

A Well, coming in from 21st Street, I would say it is about a block and a half, two blocks.

Q Could we have an idea what type of a block you are talking about?

A A long block.

Q But feetwise, could you tell us? One hundred feet? Two hundred feet?

A I estimate a block to be approximately about five hundred feet.

I would say it is about seven hundred, eight hundred feet.

Q So, in other words, from the main gate to the water's edge is about seven hundred feet?

A Right.

Q How wide is it or how long running along the waterfront?

A It extends from 21st Street over to 19th Street.

[11] Q How many feet is that as best you can give us?

A I would say approximately about another thousand feet.

Q So the whole area would measure one thousand feet by seven hundred feet?

A I would say that.

Q Is this entire area one thousand by seven hundred feet approximately enclosed?

A It is enclosed.

Q It has two gates that you previously testified to?

A Right.

MR. LINDEN: We so concede.

MR. GUCCIARDO: I know.

That is why I am leading him, Mr. Linden, to save some time.

BY MR. GUCCIARDO:

Q Is there a guard maintained at these gates?

A At both of them.

Q Who are the guards?

A They are McRobert guards.

Q Who engages the McRobert guards as far as you know?

A ITO.

Q You mean the International Terminal Operating Company, Inc.?

A Right.

[12] Q Do you work for the International Terminal Operating Company, Inc.?

A Yes.

Q What is the business of the International Terminal Operating Company, Inc.?

A To receive—

MR. LINDEN: I object, unless he shows foundation to show that he knows.

JUDGE GERAGHTY: Ask the foundation.

BY MR. GUCCIARDO:

Q How long have you worked for—I will abbreviate it for the record, ITO?

A Five years.

Q In what capacity have you worked?

A As a checker.

Q Do you know what business they are in?
A Yes, I do.
Q What is their business?
A For discharging and loading cargo.
Q On where?
A Onto ships.
Q How many ships can be accommodated at this facility at 21st Street, pier of 21st Street?
A Approximately five.
Q Five ships?
[13] By the way, this is in Brooklyn?
A Yes, sir.
Q Does ITO engage a longshoreman to work both on the vessels and on the dock?
A Yes.
Q Is the sole business conducted at this facility, pier 21st Street, Brooklyn, the loading and unloading of vessels?
MR. LINDEN: I object to that as leading. Nor is there any foundation that he knows it.
JUDGE GERAGHTY: That is true, Mr. Gucciardo.
MR. GUCCIARDO: All right.

BY MR. GUCCIARDO:

Q You said you worked for ITO for approximately five years.
Where have you done this work?
A Mostly on 21st Street.
Q Do you know what business they are engaged in at 21st Street?
A Yes, I do.
Q What is the business that they are engaged in?
A They are in the business of loading and—of delivering and receiving of cargo.
Q In conjunction with what?
A With loading and discharging vessels.

[14] Q Are they engaged in any other business as far as you know, at that particular facility, pier 21st Street, Brooklyn, New York?
A Yes.
They were engaged in stripping containers for American Export Lines.
Q For the record, what does stripping containers mean?
A That means unloading containers that come off a ship.
JUDGE GERAGHTY: Just to be clear on it, you did say were engaged?
THE WITNESS: Yes.
The facility has moved to a different pier.
JUDGE GERAGHTY: I want to be sure that you said in the past tense, thank you.

BY MR. GUCCIARDO:

Q Now, do you know exactly what you are going to do every day before you do it?
A No, I don't.
Q Will you describe for us how the work is assigned and where it is assigned?
A Well, the dock boss assigns us in the morning.
Either he assigns us to delivering freight or receiving freight—rather delivering cargo or receiving [15] cargo from, for loading or discharging of ships.
Q Do you have occasion to go on the ships in your capacity as a checker?
A Yes, I do.
Q What percentage of your time is engaged in checking on board vessels as opposed to working on the dock?
MR. LINDEN: I object.
The issue here is what was he doing at the time that he was injured.
MR. GUCCIARDO: Your Honor, it is my contention that the activities generally of this claimant and what he is expected to be engaged in is important and not the

particular assignment that he may have had on a particular day.

JUDGE GERAGHTY: There is a recent decision down from the Benefits Review Board which you gentlemen may not have heard of yet.

I believe it is Coppollino, I am not sure how the name is pronounced, which involved paper into an IBM machine.

Are you gentlemen familiar with that?

MR. GUCCIARDO: I am familiar with that, but not the decision, Your Honor.

JUDGE GERAGHTY: The Board has held that that was a covered maritime, without getting into the merits of the lógic of the Benefits Review Board.

Nonetheless, in light of that decision, I feel that [16] the record should be allowed to be made, although I indicate my reluctance to do so.

I am aware of the decisions in other courts in which they have said, Mr. Linden, it is the duties at the time of the injury, not what he did two weeks ago.

MR. LINDEN: Even in Coppollino, what they did was examine what he was doing at the time he was injured.

This question is not devoted to that.

JUDGE GERAGHTY: I think it is more in the nature of a foundation question, am I correct, Mr. Gucciardo?

MR. GUCCIARDO: It is a little bit more than that, Your Honor.

It is my contention that all of the activities that this man is expected to be engaged in should be weighed in evaluating whether or not this man is engaged in longshore activity and not a particular activity at a particular time.

I realize that some of the Administrative Law Judges do not go along with that thinking.

However, I should be permitted to develop the record for purposes of appeal if an appeal should be warranted pending on your decision.

JUDGE GERAGHTY: I don't agree with your reasoning, Mr. Gucciardo.

However, I would allow you to make proffer for the record and take the answer to your question with the understanding [17] that I am doing it solely as a proffer and sustain Mr. Linden's objection, if that is the purpose of your question.

MR. GUCCIARDO: Then, will you permit him to answer the question?

JUDGE GERAGHTY: Yes, sir, I certainly would.

Would you answer the question or we will read it back.

THE WITNESS: Well, whenever I am assigned to a ship, I spend approximately eight hours a day.

As a matter of fact, I do spend eight hours a day checking.

BY MR. GUCCIARDO:

Q My question was, Mr. Blundo: In the course of a year's time, while working for ITO as a checker, what percentage of your time will be spent on board a vessel as opposed to working on the dock?

A It varies.

It varies to whenever he assigns me to a ship as a ship's checker.

Q But you have past experience of working on the ship as a checker?

A Yes.

Q Could you give us a percentage of the time?

A I would say approximately 20 percent of the time.

Q That you work where?

[18] A On the ship.

Q Thank you.

Now, during the course of the day, are you assigned to one particular task, or do you finish a task and then are reassigned and reassigned as the case may be?

A No.

When I am assigned to a ship, I stay with that there until the loading and discharging of cargo is finished.

Q All right.

Let us now go to when you are assigned on the—to work on the pier.

Do you work at a particular task or particular van all day long, or are you shifted?

A I am shifted around.

Q When you say you are shifted, on the day in question, you were injured discharging a container or a van?

A Right.

Q For the record, is a van and container considered the same thing?

A Yes, it is.

Q Now, assuming that you had not had the accident and you finished discharging that van, what other types of work would you be expected to do?

MR. LINDEN: I object.

He has not indicated a different type of work.

[19] He may be assigned to a different container.

MR. GUCCIARDO: I agree with your exception and withdraw it.

BY MR. GUCCIARDO:

Q What else would you be expected to do when you finished the van, assuming that you reported to the hatch boss—

JUDGE GERAGHTY: Mr. Gucciardo, are you still in your proffer now because I would like to get to the day in question.

MR. GUCCIARDO: One more question now, Your Honor.

THE WITNESS: When we finish unloading the container, we go on to another container.

If not, he will assign us to another task.

MR. GUCCIARDO: All right.

JUDGE GERAGHTY: Does that finish your proffer of general activities, Mr. Gucciardo?

MR. GUCCIARDO: Yes, Your Honor.

BY MR. GUCCIARDO:

Q You were injured on January 8th, 1974, is that correct?

A Yes, sir.

Q Will you tell us physically where you were located at the time of your injury?

A I was located on the 19th Street side of the pier.

[20] Q How far from the water's edge were you working at the time?

A Approximately thirty feet, forty feet.

Q What were you doing?

A We were unloading a container?

Q What was to be done with the goods that had been unloaded from this container?

A It was to be put in a bonded warehouse on the pier.

Q Then, what was to be done with these goods?

A Then, as these here cargo were assigned to a consignee, and they would come down to pick it up from Customs, it had to be released and they would have to be paid from Customs.

Q When you say Customs, what do you mean by Customs?

A U. S. Customs.

Q Are these men employed by the U. S. government?

A Yes, sir.

Q Do they have to do with checking the cargo that is received from overseas or from any—

A Well, checking and also receiving duty on it and payment for the cargo received.

Q Is there a particular type of facility that this type of cargo has to be put in before it is delivered to the consignee?

A Yes.

[21] It has to be put in a bonded warehouse.

Q Do you know where this container came from that you were discharging?

A It came from either Holland Hook or our facility out in Jersey.

MR. LINDEN: I didn't hear the last part.

THE WITNESS: A facility out in Jersey.

One of the piers out in Jersey.

MR. LINDEN: I object to the question on the grounds that he does not know where it came from.

He is stating where it may have come from.

JUDGE GERAGHTY: It does not appear that he really knows of his own knowledge, Mr. Gucciardo.

I would sustain that.

BY MR. GUCCIARDO:

Q Regardless of where it came from, do you know the stevedoring company that unloaded it?

A Right.

Q What is it?

MR. LINDEN: May I object to that unless he asks unloaded from where?

MR. GUCCIARDO: All right.

MR. LINDEN: Is he unloading the container or taking the container off a ship?

JUDGE GERAGHTY: I think if you will address that [22] question specifically.

MR. GUCCIARDO: I understand what he is driving at.

I will withdraw it.

BY MR. GUCCIARDO:

Q Do you, of your own knowledge, know whether this particular container that you were working on had been unloaded from a vessel?

A Yes.

Q Did you have papers in your possession identifying it to a vessel?

A Yes, sir, I did.

Q Do you know who, what stevedoring company rather, had unloaded it from the vessel?

A No.

That I don't know, but when it comes down to the pier, it is in the hands of ITO.

Q Does ITO have operations in Staten Island and New Jersey, as far as you know?

MR. LINDEN: I object.

Immaterial to the issues in this case.

JUDGE GERAGHTY: What is the relevancy?

MR. GUCCIARDO: I am trying to tie up the fact that ITO unloaded this cargo wherever it had been unloaded. His own employer.

JUDGE GERAGHTY: I think he has already said it was [23] in the hands of ITO but beyond that he doesn't know, of his own knowledge, based on the prior question, as to where the cargo came from, so I don't see how he could possibly answer that, Mr. Gucciardo.

BY MR. GUCCIARDO:

Q Do you know why the cargo was brought to 21st Street pier for the purposes of stripping it from the container?

A It is to be put in a bonded warehouse.

Q Couldn't that be done wherever it was unloaded from the vessel?

A I guess they didn't have the bonded warehouse on the facility.

MR. LINDEN: I object and ask that it be stricken.

He wasn't asked to guess.

BY MR. GUCCIARDO:

Q Do you know why, rather than guess?
Don't use the word "guess."

A They didn't have U. S. Customs facility on there to store this cargo.

Q Does all the cargo have to be put in a bonded warehouse before it is delivered to the consignee?

A To my knowledge, only container cargo has to be put into bonded warehouses.

Q Do you know why that has to be done?

A Because—

[24] JUDGE GERAGHTY: Excuse me, Mr. Blundo.

We have gone through that two or three times with the bonded cargo and consignee and U. S. Customs.

I don't think that we have to do it again unless you really feel that you need that for your record.

MR. GUCCIARDO: No, we'll pass over that.

BY MR. GUCCIARDO:

Q Now, after it is, the container is stripped, and it is put into the bonded warehouse, what occurs, what happens to that cargo?

A The consignee comes down to pick it up and pay duty on it.

Q And after the duty is paid, what happens?

A Then it is loaded on a truck and taken off the pier.

Q Who does the loading onto the truck?

A Longshoremen.

Q Who do the longshoremen work for?

A ITO.

Q Where is the truck physically located in relation to the pier that you described?

A Right on the pier.

Q Does he have to go through the gate that is maintained by the McRobert guards that you testified to before?

A Right, yes.

Q Now, is this the usual procedure that is followed in [25] unloading the bonded merchandise or bonded cargo from a vessel?

A Right.

MR. LINDEN: I object to that.

He hasn't indicated that he knows what the usual procedure is.

All he is doing is unloading a container.

JUDGE GERAGHTY: I think you could get the same answer by just turning the question around.

MR. GUCCIARDO: I will.

BY MR. GUCCIARDO:

Q Mr. Blundo, you said you were a checker?

A Yes, sir.

Q Do you, of your own knowledge, know what the procedure is in releasing bonded cargo to consignee?

A Yes, I do.

Q What is the usual procedure?

A Well—

JUDGE GERAGHTY: Well, without going through it in detail, is the usual procedure what you have already described, Mr. Blundo?

THE WITNESS: Somewhat like.

JUDGE GERAGHTY: What do you mean, somewhat like?

THE WITNESS: Well, before I can release cargo to a truckdriver, it has to be released to—by Customs, themselves.

[26] JUDGE GERAGHTY: So you need the release from Customs before it can be released to the consignee?

THE WITNESS: Right, to be cleared through Customs.

JUDGE GERAGHTY: I think we have gone through it two or three times.

MR. GUCCIARDO: I am going to get to the accident now.

BY MR. GUCCIARDO:

Q Will you tell us briefly how the accident occurred?

A Well, the cargo was coming off the container and I was going around to mark the draft.

There was ice on the ground and I slipped on the ice, hit my back and my head on the ground.

Q You used the word "draft," and what does that mean, please?

A The draft is a pallet containing the cargo.

Q Does the cargo on the pallet have markings on it?

A Yes, it has, and I go to give it a marking that they give me to put on it, with crayons.

According to my manifest sheet.

MR. GUCCIARDO: I have nothing further.

JUDGE GERAGHTY: Mr. Linden?

CROSS-EXAMINATION

BY MR. LINDEN:

Q I believe you came to the area where you were working [27] that is enclosed in this fence, it is approximately seven hundred feet from the water and extends about one thousand feet along the water?

A Right.

Q When the ships come in, when the ships come into this area, it comes in and is berthed parallel to the land, is that correct?

A To the pier.

Q Well, the pier is parallel to the land, isn't it?

A Well—

MR. GUCCIARDO: I am going to object to the question unless we get the type of pier, whether it is a finger pier or bulkhead pier.

JUDGE GERAGHTY: Be a little more specific, Mr. Linden.

MR. LINDEN: Well, I think when he answers the question, we will find out whether it sticks out in the water or is out by the land.

JUDGE GERAGHTY: Do you understand the question, Mr. Blundo?

THE WITNESS: Yes, it is a finger pier.

BY MR. LINDEN:

Q It sticks out into the water?

A Right.

Q Were you working on the portion that was over the [28] water or the portion that was over the land?

A Over the portion over the water.

Q You state that the area is one thousand feet along the water and that the ships pull in parallel to the land, is that right?

MR. GUCCIARDO: Objection, Your Honor.

He did not state that they pull in parallel to the land.

JUDGE GERAGHTY: This is cross-examination, Mr. Gucciardo.

I am going to let Mr. Linden—he indicated that the ships pulled in there and I think this is a reasonable construction of the prior testimony.

If the witness agrees or disagrees he can state whether or not he does.

BY MR. LINDEN:

Q The ships pull in parallel to the land, you told us, didn't you?

A That is before you explained to me about a finger pier.

Q I didn't explain anything to you.

I merely asked you a question.

A Well, it is parallel to the pier.

Q It is not parallel to the land?

A No.

[29] Q The nose of the ship is pointed toward the land, is that what you are telling us?

A Right.

Q Now, you say that you are familiar with the business of ITO at this location?

A Yes.

Q You told us, according to an answer of Mr. Gucciardo, that they were loading and unloading ships?

A Right.

Q Now, you also made mention of the fact that they were engaged, were your words, in stripping containers for American Export Lines?

A Yes, sir.

Q At the time of your injury, that is exactly what they were engaged in, is that true?

A Right.

Q You were engaged in checking cargo that was being taken from a container for American Export Lines, is that right?

A Right.

Q Now, that container was not unloaded from the ship that had berthed in this area, was it?

A No.

Q How did that container get to ITO's area, we will call it ITO's area, meaning the seven hundred by one thousand [30] foot area.

How did it get over there?

A It was brought over by Murphy truckdriver.

Q Who?

A Murphy Trucking.

Q What is Murphy Trucking; is it a public carrier?

A I guess so.

Q The truckdriver is ILA members or members of the Teamsters Union?

A Teamsters.

Q Truckdrivers are not in the employ of ITO, are they?

A No, they are not.

Q Do you know who pays the trucking concern to bring these containers over to this area?

MR. GUCCIARDO: Objection, Your Honor.

It is immaterial to the issues.

As long as they are not employed by ITO, what difference does it make who pays them?

JUDGE GERAGHTY: I will let him, as long as it is cross.

Who pays them?

BY MR. LINDEN:

Q Do you know who pays these men?

A I suppose if John Murphy hires them, John Murphy pays them.

[31] Q Do you know who pays Murphy for transporting the containers?

A I guess—whoever picks up the—

MR. GUCCIARDO: Your Honor—

JUDGE GERAGHTY: It is apparent that the witness does not know.

He is suggesting, Mr. Linden.

MR. LINDEN: Well, Judge Geraghty, this is, of course—also goes to the weight of the allegation that he knows the business.

JUDGE GERAGHTY: The business that he was talking about was the longshoring activities, not the business outside the gate or how cargo, who pays for it there.

I drew the distinction.

MR. LINDEN: Is that conceded so then I can depart from this particular area of cross-examination?

This witness is not familiar with Murphy Trucking or anything to do with the container moving into this area.

JUDGE GERAGHTY: I can't concede anything.

MR. LINDEN: I am asking if Mr. Gucciardo will concede that.

MR. GUCCIARDO: I am not conceding anything.

Just that this man does not know anything about the Murphy Trucking.

BY MR. LINDEN:

[32] Q You are not familiar with the contractual relationships between ITO, American Export Lines or the trucking company as to who is obligated to do what as far as getting containers to this area, are you?

A One thing I do know is that the containers come off the ship—

Q I know you are quite interested in establishing that, but I would like you to please answer my question, if you will.

MR. GUCCIARDO: Object to counsel arguing with the witness, Your Honor.

JUDGE GERAGHTY: You are arguing, Mr. Linden.

But the counsel is correct in that you are not answering the question as posed.

When you are asked the question, Mr. Blundo, answer the question as put to you.

If you don't know the answer, then say that you don't know it.

Do you understand what I am telling you?

THE WITNESS: Yes, sir.

JUDGE GERAGHTY: Now, let me hear what you want to say.

THE WITNESS: As far as the operations on the pier, I am well familiar with them.

JUDGE GERAGHTY: Fine.

Now, if he asks you a question about that, then you [33] try and answer the question that Mr. Linden asks you and the answer you were giving was really not responsive.

You have to respond to that question, not what you want to say.

Reask the question, Mr. Linden, and if you don't know the answer, you just say that you don't know.

THE WITNESS: Can I point out one fact?

I see the containers and—now as far as Murphy is concerned, we are only interested in what comes in on them and we do the work for ITO as stripping containers.

JUDGE GERAGHTY: Okay.

Thank you, Mr. Blundo.

BY MR. LINDEN:

Q The answer to my questions is: You are not familiar with the contractual relationships whereby ITO does work for American Export Lines or Murphy does work for whoever, and brings the containers into this area, are you?

JUDGE GERAGHTY: Mr. Blundo, do you know what contractual relationships means?

THE WITNESS: No, I don't.

JUDGE GERAGHTY: What he is asking you is: Do you know what kind of agreement, paper, contract, is signed between ITO and anybody else?

THE WITNESS: No, that I don't.

It is none of my business.

[34] JUDGE GERAGHTY: Is that enough?

MR. LINDEN: Yes, it is.

Thank you.

BY MR. LINDEN:

Q Now, you also indicated originally, generally, that ITO is engaged in the business of unloading and loading ships, is that what you told us?

A Yes.

Q The work that you were doing was not the loading or the unloading of a ship, you were just either loading or unloading a container?

MR. GUCCIARDO: Objection, Your Honor.

This is a determination that has to be made by you.

MR. LINDEN: I am talking about the physical movement of the cargo.

JUDGE GERAGHTY: Objection overruled, Mr. Gucciardo.

He is asking the question in a proper form.

He is asking at the time of the accident, was he loading or unloading a ship or was he loading or unloading a container.

That, I think, is a proper question, Mr. Gucciardo.

MR. GUCCIARDO: The Benefits Review Board has already ruled that the process of unloading does not stop at the stringpiece; that the container is unloaded and then it has to be delivered to the consignee and that includes an entire [35] process.

There has already been a determination made along those lines.

JUDGE GERAGHTY: I realize what the determinations have been with respect to that, Mr. Gucciardo, but that does not prevent Mr. Linden from asking the man what he was doing at the time of his injury, loading or unloading a ship, or loading or unloading a container.

What further ramifications flow from that as a matter of law is a wholly different story.

BY MR. LINDEN:

Q The question is: That you were not taking, checking cargo from a ship that was berthed there or put on there, you were checking cargo that was being taken out of the container that was located at this building, is that correct?

A Yes.

Q Now, it is also true that you do not know who took the particular container off the ship wherever it was taken off, and put it on the land, do you?

A Will you repeat that again, please?

Q Yes.

You do not know who, what company, what person, took the container upon which you were working at the time you were injured, from the ship, wherever it was, and put it physically on the land?

A Well, if the container come from Holland Hook, it [36] was taken off by American Export Lines.

Q But you don't even know that.

You don't know where it came from specifically, do you?

A Well, the paper is on it.

I have to know what is on the papers and the papers clearly explain American Export Lines.

The ship belongs to American Export Lines.

Q Are you generalizing as to who actually took this container from what ship or don't you recall?

A Well, I don't recall the name of the ship that it came off of.

But I know that the container came off the ship.

Q No question about that.

But my only question to you was, you don't know?

A It could be any one of a number of ships.

It could be the Defiance, the Lightning.

JUDGE GERAGHTY: Wait a second, Mr. Blundo.

What you are saying, just so we don't get the record confused—Mr. Linden is asking you what gang of longshoremen took it off the ship?

THE WITNESS: No, I don't.

BY MR. LINDEN:

Q Do you know how long before you started working on this container it had been removed from the ship?

[37] A Approximately the same date or the day after.

Q Do you know.

A No, I don't.

Q Is it true, sir, that sometimes a container is removed from a ship at a distant point? It might take

several days before it will get to the area before it is unloaded?

A Not to my knowledge.

Q You don't know, do you?

A No.

MR. LINDEN: I don't think I have anything else.

MR. GUCCIARDO: I have one or two.

REDIRECT EXAMINATION

BY MR. GUCCIARDO:

Q What is the usual period of time from the time a container is unloaded from a vessel up to the time that it is actually delivered to the consignee.

MR. LINDEN: I object on the grounds that there is no showing that this claimant knows any of this.

JUDGE GERAGHTY: You are going to have to ask a foundation question, then, Mr. Gucciardo.

MR. GUCCIARDO: I will correct that.

BY MR. GUCCIARDO:

Q Do you know of your own knowledge what the procedure is between the time a container is taken off the vessel and delivered to the consignee and how long it takes?

[38] A Well, it has to come over to the pier to be stripped and that there could take a week.

Q Is this the usual procedure?

MR. LINDEN: I object, the question has been answered.

JUDGE GERAGHTY: I think I will allow one more question.

He has given the procedure, now Mr. Gucciardo is asking, is this the general procedure.

THE WITNESS: Generally, when it comes down to the pier, stripped—

BY MR. GUCCIARDO:

Q Just answer the question.

Is this the usual procedure?

A Yes, it is.

Q Did you follow the usual procedure in this particular case?

A Yes, I did.

Q Now, you mentioned Murphy Trucking or John Murphy Trucking.

Are you paid in any form or fashion by John Murphy Trucking?

A No.

Q Are you paid by the American Export Lines?

A No.

[39] Q When the container is actually unloaded from a vessel, it's done by American Export Lines or stevedoring company that works for them?

MR. LINDEN: I object, the witness has indicated that he does not know.

MR. GUCCIARDO: I am sorry.

He did not indicate this particular phase of it.

JUDGE GERAGHTY: He has not made any response to this particular question, Mr. Linden.

THE WITNESS: It is being done by ITO.

BY MR. GUCCIARDO:

Q So that the cargo in question was unloaded somewhere by ITO?

A Right.

JUDGE GERAGHTY: Mr. Linden, you look—he said it is unloaded by ITO.

MR. LINDEN: I understand what he said.

BY MR. GUCCIARDO:

Q Would ITO be engaged in unloading a container from Pittston Stevedoring Company or Universal Stevedoring Company?

A It is.

MR. LINDEN: I object.

The witness said he doesn't know.

MR. GUCCIARDO: I join in the objection and move that the answer be stricken from the record.

[40] JUDGE GERAGHTY: That takes care of that, Mr. Linden.

BY MR. GUCCIARDO:

Q Of your own knowledge, do you know that ITO has stevedoring facilities located in New Jersey as well as the New York area?

MR. LINDEN: That is conceded and it is immaterial to the issues here.

MR. GUCCIARDO: As long as it is conceded, fine. I have nothing further.

RECROSS-EXAMINATION

BY MR. LINDEN:

Q You told us a little while ago that you did not know who actually took the container from whatever ship it had been on when it was shipped into this country?

MR. GUCCIARDO: Objection, Your Honor.

What he stated was that he did not know the gang that did it.

Not that he did not know who did it, what company did it.

I object to the form of the question.

MR. LINDEN: I submit my question is based on the record.

JUDGE GERAGHTY: I would agree with Mr. Gucciardo.

He indicated that he did not know what gang.

He did not reflect what company and I think the [41] question as was asked before was extremely narrow.

MR. LINDEN: All right.

BY MR. LINDEN:

Q Do you know what company was employed to remove the particular container which you were working on when you were hurt, from whatever ship it had been on, transporting this container into the United States?

A No.

MR. LINDEN: That is all.

JUDGE GERAGHTY: Mr. Gucciardo, do you have anything?

REDIRECT EXAMINATION (Continued)

BY MR. GUCCIARDO:

Q Do you know what stevedoring company had unloaded it from the vessel?

MR. LINDEN: I object.

The question has been answered.

He is leading him into a different answer.

MR. GUCCIARDO: No.

It isn't, Your Honor.

His question was too ambiguous for a direct answer.

MR. LINDEN: Not only ambiguous but all inclusive.

JUDGE GERAGHTY: I will agree with Mr. Gucciardo.

You may answer it.

BY MR. GUCCIARDO:

[42] Q Do you know what stevedoring company had unloaded this container?

A No, I don't.

Q Now, do you know this gentleman sitting in the hearing room?

A No, I don't.

MR. GUCCIARDO: All right.

I have nothing further.

JUDGE GERAGHTY: Mr. Blundo, let me ask you a couple of questions.

Now, on the day of your accident, you were working on the pier inside of a building that goes out over the water, is that correct?

THE WITNESS: No.

JUDGE GERAGHTY: My notes indicated that you were working on a portion that stuck out over the water.

THE WITNESS: Yes, on the stringpiece.

JUDGE GERAGHTY: You were working on the stringpiece.

You were not outside the building, you were inside the building?

THE WITNESS: That is right.

JUDGE GERAGHTY: And you were engaged as a checker in the stripping of a van?

THE WITNESS: Yes.

JUDGE GERAGHTY: And is a van equal to a container, [43] do the words mean the same thing?

THE WITNESS: Yes, sir.

JUDGE GERAGHTY: And the container belonged to who?

THE WITNESS: American Export Line.

JUDGE GERAGHTY: The work was being done by ITO?

THE WITNESS: Yes, sir.

JUDGE GERAGHTY: With the longshoremen stripping the container—who were they employed by?

THE WITNESS: ITO.

JUDGE GERAGHTY: Did you have papers in your hands?

THE WITNESS: Manifest sheet.

JUDGE GERAGHTY: What was shown on those papers?

THE WITNESS: The description of the cargo and the consignee and the amount.

JUDGE GERAGHTY: Did it show where the container had come from?

THE WITNESS: Yes, it does.

JUDGE GERAGHTY: Do you remember, of your own knowledge right this moment where?

THE WITNESS: No, because that was the first or second draft that it had come out of.

JUDGE GERAGHTY: When you said it took a week to do something, was that the week for the cargo after it comes out of the container before it gets in the hands of the consignee, or is it a week possibly between the time the container comes [44] off the ship until it gets to you?

THE WITNESS: It could be up to the time it comes to me.

JUDGE GERAGHTY: It could be as much as a week?

THE WITNESS: Yes.

JUDGE GERAGHTY: On this particular container, do you know how long it had been since it had come off the ship?

THE WITNESS: No, I don't.

JUDGE GERAGHTY: Had it been opened at any time prior to the time you started stripping?

THE WITNESS: No, they come in with a seal.

The seal has to be broken and shown to Customs.

JUDGE GERAGHTY: Your action is the first time that the container starts to be stripped or unloaded, the cargo from outside the van?

THE WITNESS: Right.

And we have to record the serial number and the seal, all that.

JUDGE GERAGHTY: Now, sir, I take it a draft, because this is new terminology to me, a draft is a portion of the cargo that is inside the container that is put on a pallet?

THE WITNESS: Yes.

JUDGE GERAGHTY: Is that correct?

THE WITNESS: That is right.

JUDGE GERAGHTY: That is what you were marking, a [45] portion of this cargo?

THE WITNESS: You see, the manifest sheet is given a number and an item number.

Now, it could be, let us say they assign a number 735, Item No. 1.

We have to mark that on the draft.

JUDGE GERAGHTY: And the draft could be maybe six bags on top of a pallet?

THE WITNESS: It could be six bags, it could be any amount.

JUDGE GERAGHTY: But that somes out of the container, put on a pallet and you mark that?

THE WITNESS: Right.

JUDGE GERAGHTY: That is what you were doing at the time you slipped and fell?

THE WITNESS: Right.

JUDGE GERAGHTY: Mr. Linden, did you have a question?

MR. LINDEN: If you are finished, yes.

JUDGE GERAGHTY: Thank you for educating me, Mr. Blundo.

RECROSS-EXAMINATION (Continued)

BY MR. LINDEN:

Q Mr. Blundo, you marked pieces of cargo that were removed from this container by your fellow longshoremen, is that right?

[46] A Right.

Q Now, were these—was the cargo that was taken out, did that consist of crates, bags, barrels, various sorts of containers holding merchandise inside each particular container, I mean, each particular package?

A It could be cartons, it could be crates, it could be bags, it could be almost anything.

Q You don't open up an individual crate that is part of the cargo, do you?

A No, we don't.

Q You are just concerned with the bulk outside appearance of the package in which the cargo has been placed by the shipper?

A No.

I am concerned with the marks on it.

Q I understand that, but it is only the crate itself, or the container, or the ball, that you are concerned with, and the marks on it?

A Right, not with the contents.

MR. LINDEN: Not with the contents.

That is all.

MR. GUCCIARDO: One or two questions, if I may.

REDIRECT EXAMINATION (Continued)

BY MR. GUCCIARDO:

Q This seal that you say you have to break on the [47] container in order to get in, where is it placed?

A The seal is broken.

We record the number on it.

Q Who seals it and where is it done?

A It is sealed on the other side, Europe, where the container comes from.

Q In a foreign port.

Then, are you the first person to break this seal after the container arrives in the United States?

A Right.

Q Does the container contain merchandise from one consignee or multiple consignees?

A Multiple consignees.

Q Is this the reason that the stuff has to be removed from the container and then separated for the various consignees?

A That is right.

Q You mentioned the word "stringpiece."

A Right.

Q Will you tell us what the word "stringpiece" is and what the function is?

A It is a piece that runs along the pier.

JUDGE GERAGHTY: I am familiar with that terminology, Mr. Gucciardo, thank you.

BY MR. GUCCIARDO:

Q Is there water under the stringpiece?

[48] A Yes.

MR. GUCCIARDO: I have nothing further, Your Honor.

JUDGE GERAGHTY: Thank you very much, Mr. Blundo.

Thank you for explaining that to me.

I did not understand the word you were using.

Mr. Linden, do you have a witness?

MR. LINDEN: I have a witness.

Mr. Cash.

Whereupon,

ALBERT W. CASH

was called as a witness, and after having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LINDEN:

Q What is your name?

A Albert W. Cash, C-a-s-h, International Terminal Operating Company, 17 Battery Place, New York, New York, 10004.

Q Are you employed by ITO?

A Yes.

MR. LINDEN: May I use ITO, Judge Geraghty?

JUDGE GERAGHTY: Certainly.

THE WITNESS: Yes.

BY MR. LINDEN:

Q What is your capacity there?

A I am the Director of Safety for ITO.

[49] Q For how long have you been such Director?

A This assignment, fifteen years.

Q Are you familiar with the business of ITO at the location at 19th and 20th Streets on the Brooklyn waterfront where this claimant was working at the time of his injury?

A Yes, sir.

Q Do you know what he was doing at the time he was injured?

A According to the investigation of the accident, he was checking—

MR. GUCCIARDO: Objection, Your Honor.

The question is: Does he know?

He says according to the investigation, and I object to the answer and move that it be stricken.

JUDGE GERAGHTY: On the grounds of what?

MR. GUCCIARDO: That this is not within his knowledge.

JUDGE GERAGHTY: It does not appear from his knowledge that he has personal knowledge, Mr. Linden.

MR. LINDEN: First, let him answer whether he knows.

BY MR. LINDEN:

Q Do you know what he was doing at the time he was injured?

A Yes, sir.

Q How do you know?

[50] A As a result of an investigation of an accident concerning Mr. Blundo, he was working as a checker at a—

MR. GUCCIARDO: Objection, Your Honor.

The same grounds, it is not within his knowledge.

JUDGE GERAGHTY: Now, I am not clear whether or not it is.

Now, Mr. Cash, when you say according to an investigation, is it your investigation?

THE WITNESS: Yes, sir.

JUDGE GERAGHTY: You performed it?

THE WITNESS: Yes, sir.

JUDGE GERAGHTY: Or people working directly for you who reported back to you?

THE WITNESS: And people working directly for me.

JUDGE GERAGHTY: This is the usual course of the way things are done?

THE WITNESS: Yes, sir.

JUDGE GERAGHTY: Since this is an administrative proceeding, I am going to allow him to testify.

Since this is apparently what he does, Mr. Gucciardo.

However, it would go, of course, to the weight of the testimony, unless it is something that he personally knows himself.

So I would appreciate what you draw, Mr. Linden, as to whether it is one of his investigators reporting back to [51] to him or whether it is something that he found out himself.

MR. LINDEN: I intend to, Judge Geraghty.

JUDGE GERAGHTY: Thank you.

BY MR. LINDEN:

Q In the course of this investigation which you state was conducted by you and by other people, were there records that are kept by the company in the normal regular course of business in respect of the claimant's activities and also the manner in which he was injured?

A Yes, sir.

Q Did you consult those records?

A We have an accident report which contains all the information, the location of the accident, the man's position, or the type of work he was performing at the time of the accident, date, injury, things of that nature.

Q Are you familiar with the type of checking that he was doing in checking the contents of the container that was being unloaded when he was hurt?

A Yes, sir.

Q To whom did this container belong?

MR. GUCCIARDO: Objection, Your Honor.

No proof in the record that he knows which container it was or how he established this.

JUDGE GERAGHTY: I think he has already laid sufficient foundation because he has testified that he has [52] consulted the investigation reports and this contains all the information as to what was transpiring at the date, time and place of the accident, which Mr. Blundo was involved in, and without going into agonizing detail as to each item that he knows, may I just be clear, unless I am mistaken, is it your testimony, Mr. Cash, that this investigation report shows all the details with respect to what Mr. Blundo was doing at the time he was injured?

THE WITNESS: Yes, sir.

JUDGE GERAGHTY: On those grounds, your objection is overruled.

BY MR. LINDEN:

Q When was this investigation conducted, how along after the accident?

A I became involved in it, I believe, the day following the accident, sir.

The investigation was made on the day of the accident, prior to my arriving down there.

Q Were you able to identify the container on which the claimant had been working at the time his injury occurred?

A No, sir.

Q Were you able to identify generally to whom the container belonged?

A No, sir.

Q Do you know anything as to what happened to that [53] container after the claimant was injured?

A In the container?

Q Injure the container itself?

A No, sir, I do not.

Q At this location, is ITO engaged in taking cargo off ships or putting it on ships?

A At this—

Q At this location where the claimant was working on 19th Street.

A We do not use that pier, sir, that section of the pier which is the northeast side for loading or discharging from ships.

MR. GUCCIARDO: Objection, Your Honor.

The question was: At this pier, not the northeast side. The man is restricting the answer.

MR. LINDEN: He should restrict the answer because I asked him about the location where the claimant was working at 19th and 20th Streets.

JUDGE GERAGHTY: My understanding of the question, Mr. Gucciardo, he was asking specifically as to the place where the claimant was working, which he stated was the stringpiece at the 19th Street pier.

BY MR. LINDEN:

Q What operations are conducted by ITO at this [54] location where the claimant was injured; what were they doing there?

A Storage of various types of commodities, both ITO's and other parties, and also stripping and stuffing station which at that time we were operating for an outside contractor.

Q What outside contractor?

A American Export Lines.

Q The claimant has testified that this particular container had come from American Export Lines and was being unloaded for them.

Does ITO have anything to do with the movement of that container into your facility at 19th Street?

A No, sir.

Q Who brings the container into this area?

A A common carrier, sir.

Q Do you know who takes the containers on which you were working, or rather the claimant was working at the time he was injured, what company, or what instrumentality actually physically takes the container from the ship after it has arrived at wherever it is being unloaded?

A No, sir.

Q Has it anything to do with the conduct of your business in taking cargo out of the container for American Export Lines as to who, where or when this container was physically removed from the ship?

[55] A No, sir.

Q Who retains you, who retains ITO to remove cargo from a container, American Export Lines containers?

A American Export Lines.

Q Do you have—does ITO have anything whatsoever to do therefore with the loading or unloading, that is, the placing onto a ship or the removal from a ship of these containers in which you were engaged in checking cargo at the facility at 19th Street?

A No, sir.

Q Is it true that in other areas ITO and at another portion of this facility, ITO does load and unload ships?

A Yes, sir.

Q Is it correct, therefore, that ITO is engaged in several different operations, part of which concerns the loading and unloading of ships, part of which has to do with the placing of cargo into a container and the removing of cargo from a container?

A Yes, sir.

Q Is ITO also in the business of warehousing merchandise in this general facility area for future transshipment into other areas?

A Yes, sir.

Q Do you know from what ship the container from which the claimant was working had come?

A No, sir.

[56] Q Now, he has stated that a container could be at your facility up to a week before it was loaded or unloaded, is that correct?

A Would you repeat that?

Q Yes.

The claimant has told us that when a container is brought to the facility, that is, the container for emptying or filling by your people, for American Export Lines, that the container can stay there for a day or a week, is that correct?

A It could stay there considerably longer, sir.

Q What do you mean by considerably longer?

A It depends upon the expediting of the container by the agent for the American Export Line, whether or not it is required in a hurry up job or not.

We don't know. It can be there for a few days, a week, we don't know.

But they do try, according to the requirements that the contractor places on ITO, to get the container in and out.

Q Now, cargo that is placed in a container, and cargo that is taken from the container, is that marked in any fashion?

Is it in a crate or a barrel or a carton of some sort?

A It comes off various types of packages in the container. It might be one standard package throughout. It might [57] be one full load of, say, for example, bag cargo, drum cargo.

It could be almost anything, but when you break down a container that is less than a load, a full load, then it

will be a variety of types of cargo going to various companies or locations.

Q Now, you say that you use containers where the cargo that a shipper is sending out or going to receive less than a full load, you mean less than a full load to fill a container?

A For one person.

Q Are there some containers that—

A It is a consolidated unit.

MR. GUCCIARDO: Your Honor, I am going to object to this line of questioning on the basis of counsel's objection to my line of questioning.

We are concerned here with what the man was doing at a particular time.

Now, he is going into generalities, as to what containers contain, less than one carload. It is immaterial to the issues.

MR. LINDEN: May I point out that Mr. Gucciardo began to refer to decisions of the Benefits Review Board, in respect of the characterization as to what was being done and thereby determining whether this made it maritime employment or not.

[58] Our position is that you must, therefore, examine the character, nature of the activities in which he was engaged, in order ultimately to be able to determine whether the activities in which he was engaged constituted maritime admiralty material.

JUDGE GERAGHTY: I agree.

I don't need anymore, Mr. Gucciardo.

You recall, Mr. Linden, I allowed it only as a proffer for purposes of appeal.

I don't believe that it is relevant to the determination herein.

I will let you go on.

I think you developed it far enough.

If you have one or two more questions.

MR. LINDEN: I have one or two more questions and I intend to tie it into the legal concept on which we are basing our defense.

JUDGE GERAGHTY: With that offer, I will allow you to develop your record since it is some indication that there may be an appeal.

BY MR. LINDEN:

Q Are there some containers that are completely filled and destined for a particular consignee or that a shipped fills completely, that ITO does not handle at all at this facility?

[59] A Yes, house-to-house containers is one.

Going to one single consignee, we would not even bother with that.

You are talking stripping and stuffing of individual containers in order to remove or reconsolidate cargo.

Q All right.

Now, the claimant has told us that when he opens the seal on a container, that the longshoremen then remove the various crates, cartons, boxes, bags or whatever the cargo is contained in from the container, and places it in the warehouse for picking up by the consignee, is that correct?

A That happens, yes.

Q Is it also true that the individual crate that was part of the consolidated shipment in the container, an individual crate, is not opened by ITO?

MR. GUCCIARDO: Objection, Your Honor, to the form of the question.

Is it also true?

He has been using it time and time again.

I think it is now time that he be admonished that this is his witness and the question should be placed accordingly.

JUDGE GERAGHTY: He may have been doing it, but you have not been objecting up to this point.

MR. GUCCIARDO: Yes, because I knew what was going [60] to be elicited and it was not material.

But now we are going into an area that is material.

The fact that I did not object before does not mean that it was not objectionable.

JUDGE GERAGHTY: I did not mean that you were waiving it—

MR. LINDEN: Since there is an objection, I will rephrase it differently.

JUDGE GERAGHTY: Please do.

BY MR. LINDEN:

Q Mr. Cash, does ITO open up an individual crate in which cargo has been packed by a shipper?

A Only on direction of the Customs, an individual carton, they may have reason for it.

Q Normally, does ITO know whether there is one or several different items of cargo contained in a crate that is being received or sent out by a shipper?

MR. GUCCIARDO: Objection.

What is contained in a crate that is empty?

JUDGE GERAGHTY: I would agree.

I don't see whether it is relevant as to whether it is maritime employment or not.

MR. LINDEN: May I state where it is relevant, Judge Geraghty?

JUDGE GERAGHTY: Please do.

[61] MR. LINDEN: It is quite obvious that a container is like a big box, somebody takes a whole bunch of smaller crates and puts them in this big box and they are then sent someplace else.

A shipper similar can take a big crate and put five or six or ten items in that one crate.

The use of a container does not carry with it a necessity, the inference that because a container is used, it has assumed character of maritime or admiralty jurisdiction.

It is a big box.

Instead of sending a bunch of small boxes, they are sending a big box to send overseas.

Our contention is therefore in order for the Longshoremen and Harbor Workers' Compensation Act to apply to a particular occupation at a particular time, the occupation itself must be such that it has come out of the character of an area of States jurisdiction into the area of maritime jurisdiction, where the law will apply.

Now, in this case it is quite clear that ITO was not engaged in the loading or unloading of a ship.

All they were doing is unloading a box and emptying a box.

That is all.

That is the basis upon which we believe. The theoretical analysis of the application of the law, both as it [62] is written and as to its constitutionality must be approached.

JUDGE GERAGHTY: I understand why you are asking the question then, Mr. Linden.

Since that apparently is the theory of this case, without passing again on the merits of it, I will allow it just for development of the record.

Mr. Gucciardo, I realize you have taken the contrary position.

MR. GUCCIARDO: Just allow me to make one more remark.

I am not arguing with Your Honor, but he has stated that the shipper puts his in the container. It is put in by the stevedoring company wherever the vessel is—

JUDGE GERAGHTY: I don't take what either one of you gentlemen has said as evidence.

I take it as positions that you have assumed for purposes of your contentions.

MR. LINDEN: I guess that my direction wasn't clear, because obviously I intended to come to that point and

that is when Mr. Gucciardo, as I approached this area, Mr. Gucciardo objected.

JUDGE GERAGHTY: I understand.

Thank you, Mr. Linden.

Go ahead and finish your questions.

BY MR. LINDEN:

[63] Q Who puts whatever articles are contained in the crate for overseas shipment into that crate?

A The manufacturer or the people that are selling them to some, to whoever they sell them to.

For example, a crate of small parts for automobiles and crates—

MR. GUCCIARDO: I will concede that the crate is loaded by the manufacturer.

It is immaterial to the issues.

MR. LINDEN: Good. That is helpful.

MR. GUCCIARDO: But not the container.

JUDGE GERAGHTY: I understand the extent of your concession.

I understand your position, Mr. Linden.

MR. LINDEN: May I make one definition, though?

I think that the use of the word "container" should refer to the large van or container into which various items of cargo are consolidated, sealed and then placed on the ship as contrasted with a barrel or crate or carton or bag.

JUDGE GERAGHTY: I was following it that way, Mr. Linden.

I was assuming that we are still using the same definition.

MR. LINDEN: I was up to a second ago, and then I wanted to make sure.

[64] May the witness continue?

He started to say the manufacturer of automobile spare parts.

JUDGE GERAGHTY: I don't think we would have to go into it any further.

I would assume that ITO does not load every box or sack, especially if it is not a non-consolidated van.

They would be loaded by the coffee pickers or the ones who are making the automobile parts or whatever you might have, the oil drums.

MR. LINDEN: Can I also obtain a concession if we take the example that the witness referred to, we have a manufacturer of automobile parts who consolidates in the crates, which they assemble and send down to the shipper, that it is the consolidation of differing pieces of cargo that he is going to send to one particular destination?

MR. GUCCIARDO: The implication there is going a little too far.

The shipper puts it in a carton and they have multiple cartons. It is palletized by longshoremen and then put into a van depending on what port it is going to and how many consignees are delivering for that particular port.

I will stipulate to that.

JUDGE GERAGHTY: When you stipulate to that, is that the import?

[65] MR. LINDEN: Yes, but that is not quite as far as I wanted to go, nor does it answer what I asked which is: Are there crates into which a shipper consolidates several different types of parts and then closes that one crate and sends it down to the waterfront for shipment overseas?

JUDGE GERAGHTY: Mr. Cash, do you know that of your own knowledge, the answer to that question?

THE WITNESS: I didn't hear that last one.

Would you repeat it?

MR. LINDEN: The question is, Mr. Cash: Do you have a shipper who is a manufacturer of auto parts, do you know if a shipper of auto parts, takes a number of auto parts in a single crate, which is then shipped to a single consignee overseas?

THE WITNESS: Yes, sir.

MR. LINDEN: That is all.

JUDGE GERAGHTY: Is that it?

MR. LINDEN: Yes, sir.

JUDGE GERAGHTY: Do you have any cross?

CROSS-EXAMINATION

BY MR. GUCCIARDO:

Q Mr. Cash, as a Safety Director, actually you are concerned with all types of accidents that occur on the waterfront, is that right?

A Yes, sir.

[66] Q As a Safety Director, you keep records of all these accidents, is that correct?

A Yes.

Q Did you bring those records with you today?

A No, sir, I did not.

Q When did you consult them last?

A Quite some time ago.

Q How long ago?

A Are you referring specifically to Mr. Blundo's statement?

Q Mr. Blundo's statement.

When did you consult those records last?

A A few months ago is about the best I can say at the moment.

Q Would that be about three months and possibly six months?

A Yes, sir.

I review accidents, frequently at the end of the year.

Q And ITO has a great number of accidents, do they not?

A No, sir.

We don't have a great number of accidents.

Q How many accidents does ITO have in the course of the year?

MR. LINDEN: Objection, immaterial.

[67] MR. GUCCIARDO: I am testing his memory.

JUDGE GERAGHTY: I think I will allow it on cross since he said he reviews accidents, it might go to the weight of the accuracy of the investigation report.

Mr. Cash, go ahead and answer it.

Your best estimate.

THE WITNESS: The number of accidents, my best recollection as of right now, during the course of the year of 1974, we have had throughout ITO, which is a very large firm, somewhere in the vicinity of 778. I believe. Give or take a few, sir.

BY MR. GUCCIARDO:

Q 700 to 800 accidents, right?

A Accidents and/or incidents which were reported as accidents.

So we will put it as that way.

Q Would it be fair to state that every time you have an accident, the accident report comes in with the cargo that was involved and the ship it came from?

A It comes under the jurisdiction, it will have the name of the ship right on the report, sir.

Q Right.

A There is quite a bit of information.

Q Would it be fair to say, then, that since this cargo had been offloaded from the ship, if there was an [68] identity of the cargo involved with the accident, that the name of the ship involved or the name of the ship on which this cargo had been carried would be associated with the accident report?

A Of my personal knowledge, I don't know that that cargo was unloaded from the ship or what ship it may have been or when it was discharged. They were merely a freightway station where we were transferring or consolidating or stripping a container.

Q All right.

Now, does the ITO company conduct stevedoring activity for the American Export Lines?

A No, sir.

Q Do you consider that stuffing and unstuffing a container is not the business of stevedoring activities?

A No, sir.

MR. LINDEN: I object.

That is a legal question.

JUDGE GERAGHTY: Sustained on that grounds.

If you are asking for a legal conclusion.

Off the record.

(Discussion off the record.)

JUDGE GERAGHTY: Back on the record.

The interruption was for the changing of the paper in the court reporter's machine.

[69] BY MR. GUCCIARDO:

Q Are you familiar with the loading and unloading process that is required of a vessel in order to ship goods or to receive goods?

A Yes, sir.

Q Would it be fair to state, then, that in order to ship goods, that the cargo has to be received by the stevedoring company, it is then put in containers or vans and then placed on board a vessel?

MR. LINDEN: I object.

There are other alternatives also.

THE WITNESS: No, sir.

JUDGE GERAGHTY: Wait a second.

Your objection is that there are other ways, this is the only way of doing this?

MR. GUCCIARDO: We are involved with containers.

I have to concede that there are other ways, too.

MR. LINDEN: Then I have no objection.

JUDGE GERAGHTY: Mr. Cash, what you are being asked with respect to containerized cargo, is this a general way that a containerized cargo would be handled, if you know?

THE WITNESS: In general, this is one of many ways, yes.

BY MR. GUCCIARDO:

Q And similarly, when cargo is discharged from a [70] vessel, the container is removed from the vessel and then landed on the stringpiece and then put in some facility for the purposes of stripping the container, is that correct?

A Yes, sir.

Q Is the purpose for stripping a container to remove the various cargo that is contained therein, which is destined for miscellaneous consignees?

A In the case of a container which has various commodities to various consignees, it would be stripped, yes, sir.

Q And where the container has cargo destined for one consignee only, it would not be stripped, then, or would it?

A No, sir, it would not be stripped.

Q Then it would be directly given to the consignee?

A To the consignee going through the normal formality of clearance and everything else, yes, sir.

Q And in importing cargo from overseas, do they put a seal on the container?

MR. LINDEN: Who is they?

BY MR. GUCCIARDO:

Q Is a seal put on a container?

A We do put seals on containers, yes, sir.

I can't speak for everyone else.

Q Is that the way—

A It depends on the commodities within the container, [71] sir.

Q Is there certain merchandise that has to be put in a bonded warehouse until the consignee receives them?

A Depending on the Customs regulations, sir.

Q All right.

And is, if the Customs regulations required, is it then put in a bonded warehouse facility for the purposes of Customs, whatever it may be, to pay the duties?

A As designated by the Customs, sir.

Q When Customs clears it, is it then delivered to the consignee?

A Depending upon when the bonded warehouse is.

Q In this particular case, do you have a bonded warehouse at the pier at 21st Street in Brooklyn?

JUDGE GERAGHTY: If you know, Mr. Cash.

I don't know if we have a bonded warehouse on 21st Street, sir.

BY MR. GUCCIARDO:

Q Were you present when the claimant testified in this room this morning?

A Yes, sir.

Q Did you hear him testify that the goods had to go into a bonded warehouse?

A Yes, sir.

Q Do you have any reason to dispute that?

[72] A I will have to double check whether or not we are actually physically licensed as licensed bonded warehousemen at 21st Street.

Q At the present time you have no reason to dispute that, do you?

JUDGE GERAGHTY: What he is asking you, of your own knowledge right now, you don't know whether there is a bonded warehouse at 21st Street?

THE WITNESS: A formal bonded warehouse at 21st Street, I do not know of, sir.

BY MR. GUCCIARDO:

Q Okay.

Now, is it part of the normal unloading process before the consignee gets the goods, and now we are dealing with goods that have to be put in a bonded facility until

it is delivered to the consignee to unload the container from a vessel, then put it in a bonded warehouse and then deliver it to the consignee from that bonded warehouse, is that the normal procedure, sir?

A It is generally held on the pier in custody, not a bonded warehouse per se, sir.

In custody, not a bonded warehouse.

Q Is this in the custody of the stevedoring company then?

A Under the direction, yes, sir, under the direction [73] of the Customs, yes, sir.

Q If this were, in fact, a bonded warehouse, these goods would be in your custody at the pier until it is delivered to the consignee?

MR. LINDEN: Wait just a minute.

I think there are two questions there.

JUDGE GERAGHTY: Yes.

I think we are getting awfully far afield, Mr. Gucciardo.

I would trust that we are going to end this line of questioning.

MR GUCCIARDO: Your Honor, I don't think it is far afield at all.

I am trying to get into the usual practice of unloading as far as this gentleman knows, goods that are bonded and where it has to go and why it goes to a particular facility, and this is part and parcel of the unloading process.

JUDGE GERAGHTY: I think you have explored it two to three times now, Mr. Gucciardo.

That is why I wonder why you are going through it again with him, since he really doesn't know what goes on at 21st Street pier.

MR. GUCCIARDO: That is why my questions are in a general form.

Is the usual process of the unloading to put it in a [74] bonded facility, and then have Customs check it and then deliver it to the consignee?

Is that the usual procedure?

JUDGE GERAGHTY: Answer that question if you can, Mr. Cash.

THE WITNESS: I can't answer that question the way you have asked it.

You keep injecting bonded warehouse and I don't know if we have one.

BY MR. GUCCIARDO:

Q Assume that there is a bonded warehouse, is that the usual procedure?

MR. LINDEN: I object to the assumption.

We can very easily find out.

MR. GUCCIARDO: There was testimony that there was a bonded warehouse.

My man testified to that.

MR. LINDEN: No, he didn't.

JUDGE GERAGHTY: Wait, Mr. Linden.

I don't think the question is relevant as to a determination of Mr. Blundo's status at the time.

I realize that he has made reference to bonded material in his direct testimony this morning, Mr. Linden.

Unless you feel that you really need this answer for purposes of clarification of the record or an appeal— [75] MR. GUCCIARDO: I really do think I need it, Your Honor.

I like to believe that I don't ask questions that are unnecessary.

JUDGE GERAGHTY: As a hypothetical question, Mr. Cash, assuming that there is a bonded warehouse and I will take it as a hypothetical, assume that there is, then go ahead and ask your question, Mr. Gucciardo.

BY MR. GUCCIARDO:

Q Is it the usual procedure, assuming there is a bonded warehouse at the 21st Street pier facility, to strip the container, put it in the warehouse, have Customs clear it and then deliver it to the consignee?

A Yes, sir.

Q Does the consignee—now, this is not a general question, does the consignee arrive at the pier facility at 21st Street and pick up the cargo that is located at that pier, is that the end?

A No, sir.

The consignee will not necessarily pick up the cargo.

Q Does the consignee send a truckman to pick it up?

A Under normal—under many conditions a truck would come down acting for the consignee, sir.

Q When the truckman picks it up and signs a receipt to the [76] stevedoring company, do your obligations as a stevedoring company end with the signed receipt from the truckman?

JUDGE GERAGHTY: If you know, Mr. Cash?

THE WITNESS: I don't know, sir.

BY MR. GUCCIARDO:

Q You are not familiar with the loading and unloading of vessels with the International Terminal Operating Company?

MR. LINDEN: I object.

He did not say that.

MR. GUCCIARDO: This goes to the veracity.

JUDGE GERAGHTY: Mr. Gucciardo, I am not going to allow you to ask the question in that way.

He says he doesn't know when the obligation as a matter of contractual agreement ends.

MR. GUCCIARDO: That is what you said, but I did not ask that question.

JUDGE GERAGHTY: That is the way I interpreted your question.

MR. GUCCIARDO: I did not intend contractual agreement.

I realize that this gentleman may not know what this means, either.

MR. LINDEN: I certainly didn't.

BY MR. GUCCIARDO:

Q Mr. Cash, when a container is taken off a vessel and [77] it is stripped, and it is then delivered to the truckman who is sent by the consignee, does the stevedoring company after the truckman signs for the receipt of the goods, have anything further to do with that cargo?

A Yes, sir.

Q What do they have to do with it?

A Take care of any objections the receiver or consignee may have when he makes known his shortages, his damages, things of that nature, that would continue on for a period of time.

Q You are talking about claims now?

A Yes, it is part of it.

Q But does the stevedoring company have anything to do physically with that cargo after the truckman, truckman's consignee accepts it and signs a receipt for it?

A Just like any other freight station, no.

It would have finished.

Q Up until the time that the truckman picks up the cargo, is it not true that whatever handling has to be done in relation to this cargo, is done by longshoremen?

MR. LINDEN: Just a minute.

I object to that.

JUDGE GERAGHTY: It is an awfully broad question, Mr. Gucciardo.

Any handling.

[78] MR. GUCCIARDO: All right.

Let us get down to the nitty-gritty of it.

BY MR. GUCCIARDO:

Q Is it not true that when it is stripped from a container, is it put on board the truck by longshoremen?

A The truck loader may do it himself, sir.

Q He may do it himself?

A Yes, sir. Sure.

Q In conjunction with the longshoremen?

A In conjunction with them. Yes, sir, you have to have a checker there.

Q It may be the same checker as we have here, Mr. Blundo?

A It is quite possible, sir. I don't know.

Q And also working with the checker and the legman—incidentally, that is the man who works on the truck?

A Yes, I am familiar with that.

Q With the trucker known as the legman?

A Yes, sir.

Q You may have a hilo operator, too?

A Yes.

Q He is a longshoreman?

A Yes, sir.

MR. LINDEN: I object to the word "longshoreman" unless it is defined.

[79] JUDGE GERAGHTY: I would think the definition of longshoremen will be up to me.

I am not taking Mr. Gucciardo's statement of nominating everybody as longshoremen, ipso facto, as longshoremen.

MR. LINDEN: That is the reason I made my objection.

BY MR. GUCCIARDO:

Q Mr. Cash, Is the ITO Company a member of the New York Shipping Association?

MR. LINDEN: I object.

It is immaterial.

We are, but it is immaterial.

JUDGE GERAGHTY: What is the materiality?

MR. GUCCIARDO: If I declare the materiality now, I am going to tip off this man as to how to answer.

JUDGE GERAGHTY: With that representation, I will allow it for the purpose of the record.

THE WITNESS: Is the ITO company a member of—

BY MR. GUCCIARDO:

Q The New York Shipping Association?

A Along with many other port associations, they are also a member of the New York Shipping Association.

Q Does the New York Shipping Association have a contract with the International Longhoremen's Association?

MR. LINDEN: I object.

It is immaterial.

[80] JUDGE GERAGHTY: What is the materiality, Mr. Gucciardo?

MR. GUCCIARDO: The materiality is that ITO only handles longshoremen to handle their cargo, Your Honor, and I am coming to that in a minute.

JUDGE GERAGHTY: Are you trying to establish that ITO is an employer?

MR. GUCCIARDO: That is an employer that engages solely longshoremen to work on the piers.

MR. LINDEN: Is Mr. Gucciardo confusing the word longshoremen with the International Longshormen's Association?

Is that what he is trying to distinquish?

JUDGE GERAGHTY: Mr. Linden, let me be clear.

I want to be sure that I understand the purpose and direction of your question.

You are trying to establish that ITO is an employer as defined in the Act?

MR. GUCCIARDO: That is correct.

JUDGE GERAGHTY: Don't you think you have already done that?

MR. LINDEN: We have already agreed to that.

JUDGE GERAGHTY: It was conceded.

MR. GUCCIARDO: Only because I anticipate a possible appeal in this case, do I have to go a little bit further, Your Honor.

[81] MR. LINDEN: We make the concession.

JUDGE GERAGHTY: Without the concession, even it was my understanding as to jurisdiction.

So, if you are going to concede that he was an employer as defined by the Act—

MR. LINDEN: ITO is an employer generally as defined by the Act, but it does not apply to whether the longshoreman workers has jurisdiction over this accident.

JUDGE GERAGHTY: Your association goes to employer and not employee.

MR. GUCCIARDO: I will direct my question to the the employee phase of it.

BY MR. GUCCIARDO:

Q Mr. Cash, are you familiar with the operations of terminal labor and gangs on board vessels and on the pier? What they are supposed to do?

A Generally, yes, sir.

Q Is it not true that a checker or any terminal laborer is assigned by the foreman at the beginning of the day as to the particular job he may do?

A Within the class as broken down, yes, sir.

Q Is it not true that he may be assigned to check a vessel and the cargo on board a vessel, and work on board a vessel on a particular day?

MR. LINDEN: Agreed.

[82] MR. GUCCIARDO: Your Honor, I would rather have this type of answer directly from the witness.

JUDGE GERAGHTY: Go ahead and answer the question if you can answer it, Mr. Cash.

THE WITNESS: Now, the way I will answer the question, just as you asked it, sir, the answer would be no, sir.

BY MR. GUCCIARDO:

Q Are you telling us by that answer, then, that a checker cannot be assigned to a vessel for the purposes of checking cargo on that vessel?

A No, sir.

I am not answering it that way, sir.

Q Well, would you answer it that way now.

I am asking the question directly.

Can a checker receive an assignment in the morning by the foreman on the job or the block boss to go on board a vessel for the purposes of checking cargo on that vessel?

MR. LINDEN: I object.

It is immaterial to this case.

They were not loading or unloading or having anything to do with vessels at this pier.

JUDGE GERAGHTY: I would agree that the witness did not testify to anything along those lines on his direct examination.

I am allowing you great leeway in that, but your [83] client has testified to that and it has not been contradicted.

You have already gotten it from your own witness.

Let us pass on to another area because I don't think this is really relevant and material at this point in time.

It is not an issue as I see it.

BY MR. GUCCIARDO:

Q Mr. Cash, at the 21st Street facility, do you also load and unload vessels?

A Yes, sir, we do.

Q Do you also load and unload lighters?

A Yes, sir.

Q Is it the job of the terminal labor to load and unload lighters?

A We don't refer to it as terminal labor.

Extra labor, they will call it.

Q Is extra labor the same as terminal labor, whether you know it as that or not?

A You have a box there, you may have people to unload a lighter.

Q And apparently you are not familiar with the fact that the new contract says that extra labor is more to be defined as terminal labor?

MR. LINDEN: I object to that—

JUDGE GERAGHTY: Mr. Linden, I don't need your objection.

[84] That is an improper question.

BY MR. GUCCIARDO:

Q In the loading and unloading of lighters, are checkers assigned to them?

MR. LINDEN: I object.

MR. GUCCIARDO: It goes to the general activity that this man could be assigned to at a general facility.

MR. LINDEN: He is not testifying to that.

JUDGE GERAGHTY: This is cross-examination.

I assume what you are trying to establish is maritime employment, Mr. Gucciardo?

MR. GUCCIARDO: That is right, Your Honor.

JUDGE GERAGHTY: On that basis, I will allow the question.

THE WITNESS: Of my own personal knowledge, I have actually seen a checker standing on the pier, checking the drafts of cargo coming off a lighter, sir.

BY MR. GUCCIARDO:

Q Have you ever seen them physically on the lighter where the lighter is being loaded?

A No, sir.

Of my own personal knowledge I have not seen a checker myself, personally standing physically inside of the lighter.

It is so long I don't remember when, sir.

[85] Q How often do you go down to the pier, sir?

A I have had a very slack week this week.

Is this off the record?

JUDGE GERAGHTY: No, you are testifying.

THE WITNESS: I have had a slack week this week. I was down there two days—

MR. GUCCIARDO: In the course of—

MR. LINDEN: Let him answer the question.

JUDGE GERAGHTY: Let him answer the question, Mr. Gucciardo.

Don't interrupt him.

Mr. Cash, you have been down to the pier how often this week?

THE WITNESS: Two days.

BY MR. GUCCIARDO:

Q The course of a month, how many times have you been on the piers?

A It depends on what the activities are.

It is difficult for me to give a specific answer to actual number of days or hours.

Q Your office is actually located at 17 Battery Place?

A Yes.

Q Is that where you spend most of your time?

A No, sir.

On the piers and at the other ports in my general [86] duties.

Q When these vans are stripped for American Export Lines, are the truckmen sometimes located right on the pier, and taken away directly?

A I do not know, sir.

Q Can they be?
A Can they?
Q Yes.
A Oh, it is possible, sir.
Q Could you tell us from the time that a container is offloaded from a vessel, how long it usually takes until the consignee actually takes physical delivery of the merchandise at the pier facility?
A I could not give an answer to that at all, sir.
It may vary. It would be strictly hypothetical, sir.
It takes a long time.
Sometimes a reasonably short time.
Q Do you know what demurrage is?
A Yes, sir. I am aware of what it is.
Q Does demurrage apply to all consignees?
A As far as ITO, yes, sir, it does.
Q Does that mean that they have a limited number of days in which to pick up their cargo?
A Yes, sir.
And then they are charged demurrage.
[87] Q What is demurrage, for the record?
A Demurrage is a fine for allowing the cargo to remain on the pier or it is an assessment or a charge for utilizing pier facilities for storage beyond the free time.
Q In other words, it is not the purpose of ITO to store the goods for the consignee on that pier?
They want to get the stuff in and out so that they have the pier facilities free for this cargo constantly coming in or constantly going out, is that true?
MR. LINDEN: I object.
Unless he means that is the only purpose.
JUDGE GERAGHTY: Gentlemen, I am really inquiring as to what is the relevancy of the questions with reference to demurrage, Mr. Gucciardo.
Why are you asking them?
MR. GUCCIARDO: To show that this, demurrage, is a charge used in maritime activities, Your Honor, only.

JUDGE GERAGHTY: How will this tell me whether or not Mr. Blundo is an employee under the Act?
MR. GUCCIARDO: Well, just to show that it is in maritime activity that demurrage is charged.
Otherwise, it is a storage charge. He has already testified it is in the form of a penalty, because they don't store cargo there.
They have to get rid of it.
[88] MR. LINDEN: He used the word "penalty, charge, storage," he used all of those words.
JUDGE GERAGHTY: I don't believe that this is really relevant to a determination as to Mr. Blundo's status at the time that he sustained his injury.
So please go on to another area, Mr. Gucciardo.

BY MR. GUCCIARDO:

Q There is no question, is there, Mr. Cash, that the ITO operates I believe it is three piers at what is known as pier 21st Street, Brooklyn, New York.
A Three piers in Brooklyn, New York?
Q At what is known as pier 21st Street, in Brooklyn, New York, are there three finger piers at that location or two?
A If you can clarify, sir, for my edification, what is a finger pier, sir?
JUDGE GERAGHTY: Mr. Gucciardo, again, why are we going into the number of piers now?
MR. GUCCIARDO: I want to show Your Honor that while they may be engaged in stuffing or stripping a container at one part of the pier, that they may be unloading a vessel at a different part of the pier.
JUDGE GERAGHTY: What is that going to prove?
MR. GUCCIARDO: To show that it is maritime employment, generally.
[89] JUDGE GERAGHTY: With respect to Mr. Blundo?
MR. GUCCIARDO: Yes, sir.

JUDGE GERAGHTY: I don't see it that way.

I don't believe it is relevant and material.

I think we are just cluttering the record at this point.

MR. GUCCIARDO: I want to proffer, Your Honor, this evidence that Mr. Blundo could be finished stripping or checking a stripped container and then could be assigned to checking cargo directly coming from a vessel at that facility.

JUDGE GERAGHTY: Mr. Gucciardo, that is already in the record about three times.

Your statement will stand in the record as a proffer and be accepted as that.

I will not allow you to explore it on questioning.

MR. GUCCIARDO: I have nothing further, Your Honor.

REDIRECT EXAMINATION

BY MR. LINDEN:

Q There is a difference between cargo that must be put in a bonded warehouse and cargo that is kept in custody until Customs clears it?

A That would have to be cargo that is directed to be held and duties paid to the Customs for clearance will be held in bonded or custody there.

But in all cases, import cargo would have to be [90] cleared through the Customs, anyway, sir.

MR. LINDEN: That is all.

JUDGE GERAGHTY: Mr. Cash, let me ask you this one question.

Apparently, at least at the time of this accident, Mr. Blundo's, possibly not now, ITO could load or strip containers for several companies other than ITO under contract with them such as American Export, am I correct?

The container that was being worked on belonged not to ITO, in other words?

THE WITNESS: No, sir, it did not.

JUDGE GERAGHTY: It belonged to someone else?

THE WITNESS: Yes.

JUDGE GERAGHTY: And ITO was acting either to strip or to load containers for someone other than ITO?

THE WITNESS: Other than ITO, yes, sir.

JUDGE GERAGHTY: Now, the people that would put the cargo into a container, for example, will they be ITO employees or the owner of the container?

That is, American Export employees or ITO employees?

THE WITNESS: Well, sir, if I may.

If we receive a container and we are going to strip it, the container, for another company, well whoever put that cargo into that container, I wouldn't know, sir.

It could be done by anyone.

[91] JUDGE GERAGHTY: But any cargo that would come into the 21st Street pier to be stripped, whose employees would do the stripping?

THE WITNESS: On 21st Street, those would be a team that would be assigned by ITO to strip cargo from a container that has been delivered to a pier and it came from American Export operation, wherever it might have been.

JUDGE GERAGHTY: Or anyone else that you had contracts?

THE WITNESS: Yes, sir.

JUDGE GERAGHTY: But the employees doing the stripping would be ITO employees?

THE WITNESS: ITO employees but doing the actual physical work.

JUDGE GERAGHTY: I mean the labor itself.

THE WITNESS: Yes, sir.

JUDGE GERAGHTY: Thank you, Mr. Cash.

You are excused.

You may step down, sir.

Mr. Linden, do you have any other witnesses?

MR. LINDEN: No, Your Honor, I do not.

MR. GUCCIARDO: I want to rebut but perhaps counsel will agree if this is in the record or Your Honor will agree that this is in the record; that the claimant did testify that this was a bonded warehouse.

[92] If there is any question about that, I will put him back on the stand.

JUDGE GERAGHTY: I am aware of what he testified to, that is why I queried you before because there was no testimony contradicting it.

If that is all, is that what you are going to ask?

MR. GUCCIARDO: Yes.

JUDGE GERAGHTY: You have a right for rebuttal.

Mr. Blundo, you are still under oath, sir.

Just be seated.

Whereupon,

CARMELO BLUNDO

was called as a witness for rebuttal examination and testified as follows:

REBUTTAL EXAMINATION

BY MR. GUCCIARDO:

Q Mr. Blundo, do you of your own knowledge know whether or not ITO maintains a bonded warehouse at the 21st Street pier facility in Brooklyn where you worked?

A At that time, yes.

Q How do you know this, sir?

A Because it was a Custom shack right inside the warehouse.

It had separate guards and everything.

Q The Custom shack, what do you mean by that, what [93] do you mean by that?

A A Customs room was right inside there. Inside the warehouse.

Q Who were the men that were in the Customs shack, as you put it?

A Customs.

Q Working for the United States Customs Service?

A Right.

Q Did you know Mr. Cash who testified here this afternoon?

A No, I didn't.

Q Have you ever seen him down at that pier?

A No, I have never seen him.

Q How many years did you say you worked there?

A Five years.

Q Did he ever talk to you personally about this accident?

A Nope.

Q Does ITO at that particular facility, pier 21st Street, load and unload vessels?

A Yes.

Q Have you worked for ITO loading and unloading as a checker, that is?

MR. LINDEN: I object.

This has all been covered on direct examination.

[94] BY MR. GUCCIARDO:

Q At that facility?

A Not at that facility.

JUDGE GERAGHTY: This is rebuttal, Mr. Gucciardo.

You are going to have to rebut only what Mr. Cash testified to and that has not been testified by Mr. Cash.

BY MR. GUCCIARDO:

Q Do you, at that facility, load and unload lighters?

A Sometimes.

Q When you load and unload a lighter, are you physically located on the lighter or not?

A Sometimes.

MR. LINDEN: I object.

He was not near a lighter during the course of his activities at the time he was hurt.

JUDGE GERAGHTY: Mr. Gucciardo, on rebuttal, I would take it that you would direct your rebuttal to rebutting Mr. Cash's direct testimony.

MR. GUCCIARDO: All right.

BY MR. GUCCIARDO:

Q At the time that you were injured, the merchandise that you were directly involved with, where was it being —what was being done with it?

MR. LINDEN: He testified to that.

JUDGE GERAGHTY: Mr. Gucciardo, this is rebuttal.

[95] Mr. Cash did not testify to that.

Mr. Blundo did.

So there is no purpose in asking him that again.

MR. GUCCIARDO: I have nothing further.

BY MR. LINDEN:

Q What is a bonded warehouse?

A A bonded warehouse is where you store cargo coming out of a container.

Q Is it all cargo that is moved from a container, cargo that must be—

A Well, it is just—

Q Mr. Blundo, please—

JUDGE GERAGHTY: Let Mr. Linden finish the question first.

BY MR. LINDEN:

Q Is all cargo that comes out, that comes in from overseas, cargo that has to be put in a bonded warehouse?

A No.

Q What does the word bonded mean?

A Where cargo is insured.

Q Insured?

A By either the United States government—in other words, it is a warehouse where security is even more.

Q Did you say the United States government insures it?

A No, I didn't say the United States government.

[96] It is in the custody of the U.S. Customs.

Q Is there something different by being in custody of government and bonded?

A This is specifically for U.S. Customs.

Q Would you tell me whether there is a difference in cargo kept by Customs as contrasted by cargo for which there must be some sort of a bond, do you know?

A There is, because you see, it is a separate operation, has its own guards, in other words, it has its own men and nobody can enter or leave there without permission of the Customs.

JUDGE GERAGHTY: Mr. Linden, I am not going to let you go any further with this.

The witness, I think, is trying to explain what he means by bonded as much as he possibly—

MR. LINDEN: That is the purpose of my question. He doesn't know.

Then I have no more questions.

JUDGE GERAGHTY: Yes, Mr. Linden.

I saw where you were going.

Mr. Blundo, thank you, sir.

You may be seated.

MR. LINDEN: May I say it is immaterial anyway.

But I thought I had to cover it in order to protect the record.

[97] JUDGE GERAGHTY: Yes, I didn't mean that.

It is just the fact that we are dealing with terminology, specifically, which again involves at least collaterally definitions which may better be found in Black's than somewhere else, rather than Mr. Blundo's understanding.

Does either side have any further evidence?

MR. GUCCIARDO: No, Your Honor.

MR. LINDEN: No.

JUDGE GERAGHTY: Gentlemen, we are at the point, then, where you may make closing argument or submit on the record.

I might indicate there is some possibility I will not be with the agency January or much beyond January. I am hopeful, at least, of that possibility, not to reflect adversely on the agency that I am with, just that there may be.

I am telling you so that you have a time frame reference.

I am prepared to rule orally on this matter if you gentlemen wish to make oral argument.

MR. GUCCIARDO: I will make a brief oral argument and I would go along with you.

JUDGE GERAGHTY: I will not preclude you.

I will come back and write the decision no matter where.

[98] MR. LINDEN: Mine won't be so brief.

JUDGE GERAGHTY: Off the record.

(Discussion off the record.)

JUDGE GERAGHTY: Back on the record.

Gentlemen, I take it there is no further evidence?

MR. LINDEN: That is right, sir.

JUDGE GERAGHTY: And there is no closing argument?

You are going to submit written briefs.

I will set the briefs as 10 January and there will be no continuation of time granted other than for the most dire exceptions.

It is going to be the old saw that you are excused from the exam only if you are turned in on a stretcher.

Gentlemen, the record will only be adjourned, and Mr. Gucciardo, you will also, if you are claiming fees, follow the usual procedure with respect to submitting them.

Thank you very much.

The record is adjourned.

(Whereupon, at 11:28 o'clock, a.m., the hearing was adjourned, with the above noted stipulation.)

APPENDIX L

GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

APPEAL FROM BENEFITS REVIEW BOARD

Case No. 75-4249

In the Matter of the Claim for Compensation under the Longshoremen's and Harbor Workers' Compensation Act made by

CARMELO BLUNDO,
Claimant-Appellee,

v.

INTERNATIONAL TERMINAL OPERATING COMPANY, INC.,
Self-Insured Employer-Appellant.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
UNITED STATES DEPARTMENT OF LABOR,
Respondent.

Consolidated with Cal. #1014
(& in 76-4009, 76-4042, 4043)

DATE	FILINGS—PROCEEDINGS
11-19-75	Filed petition for review
11-19-75	Served copy of petition under covering letter on (B.R.B.)
12- 1-75	Filed receipt of service of petition on (B.R.B.)
1-14-76	Filed order; record by 2-3-76 w/dismissal in default; petitioner's brief and joint appendix by 3-1-76 w/dismissal in default; respondent's brief by 3-31-76; argument to be ready week of 4-12-76 (PC)

DATE	FILINGS—PROCEEDINGS
1-19-76	Filed record (original papers of Benefits Review Board)
2- 3-76	Filed motion to amend and reform caption, Director, Office of Workers' Compensation Programs (w/pfs)
2- 4-76	Filed order; appellant's brief and joint appendix by 3-31-76; appellee's brief by 4-30-76; argument to be ready week of 5-10-76
2- 6-76	Filed memorandum in opposition to motion of the Director to be named a party respondent (w/pfs)
2-10-76	Filed order granting motion to amend caption
3-30-76	Filed motion for leave to file brief as amicus curiae, National Association of Stevedores (w/pfs)
3-31-76	Filed brief, petitioner (ITOC) w/pfs
3-31-76	Filed appendix, petitioner (ITOC) w/pfs
4- 1-76	Filed order granting motion for leave to file brief as amicus curiae, (National Association of Stevedores)
4- 1-76	Filed brief, amicus curiae (National Association Of Stevedores)
4- 6-76	Filed order granting motion to consolidate with 76-4009, 76-4042, 76-4043
4-23-76	Filed brief, petitioner (Pittston Stevedoring Corp. & Home Insurance) w/pfs
4-23-76	Filed appendix, petitioner (Pittston Stevedoring Corp. & Home Ins.) w/pfs
4-26-76	Filed motion to reform caption, Director OWCP (w/pfs)
4-28-76	Filed motion for extension of time to file briefs, respondent (w/pfs)

DATE	FILINGS—PROCEEDINGS
4-29-76	Filed motion for extension of time to file brief, respondent (Dellaventura & Scaffidi) w/pfs
4-29-76	Filed briefs, respondent (Carmello Blundo) w/pfs
4-30-76	Filed order granting motion to reform the caption to include the Director, Office of Workers' Comp. Programs as a party respondent
4-30-76	Filed briefs, respondent (Ralph Caputo) and supplemental appendix (w/pfs)
4-30-76	Filed motion to file briefs amicus curiae and to participate in oral argument, International Longshoremen's Association, AFL-CIO (w/pfs)
5- 3-76	Filed order granting motion to extend time to file respondent's brief to 5-7-76
5- 5-76	Filed order granting motion to file respondent's brief (Dellaventura & Scaffidi) to 5-14-76
5- 6-76	Filed motion for extension of time to file brief, respondent (Director, OWCP) w/pfs
5-10-76	Filed order granting motion for leave to file a brief amicus curiae as to filing a brief only (International Longshoremen's Assoc. AFL-CIO)
5-10-76	Filed brief, amicus curiae (International Longshoremen's Assoc. AFL-CIO)
5-11-76	Filed order granting motion for extension of time to file brief, respondent (Director, OWCP) to 5-14-76
5-12-76	Filed reply brief, petitioner (ITOC)—w/pfs
5-14-76	Filed brief, respondent (John Scaffidi)—w/pfs
5-14-76	Filed brief, respondent (Anthony Dellaventura)—w/pfs
5-17-76	Filed brief, respondent (Director, Office of Workers' Compensation) w/pfs

DATE	FILINGS—PROCEEDINGS
5-20-76	Argument heard (by: Lumbard, Friendly, Oakes)
6- 2-76	Filed reply briefs, petitioner (Pittston Stevedoring Corp.) w/pfs (5cc)
6-21-76	Filed supplemental record (original papers of B.R.B.)
7- 1-76	Judgment affirmed (Friendly, C.J.)
7- 1-76	Concurring and dissenting (Lumbard, C.J.)
7- 1-76	Filed Judgment
7-13-76	Filed four statement of costs, respondent (Blundo) (filed in 76-4009, 76-4042, 76-4043)—also for Dellaventura, Scaffidi and Caputo
7-16-76	Filed affidavit in opposition to statement of costs, petitioner (ITOC)—w/pfs
7-22-76	Filed reply affidavit to petitioner's opposition to claimant's bill of costs, respondent (Blundo)—w/pfs
8- 3-76	Issued mandate (opinion, judgment and four statements of costs—Blundo, Dellaventura, Caputo and Scaffidi) & in 76-4009, 76-4042 and 76-4043
8- 4-76	Returned record (original papers of BRB) (& in 76-4009)
8-25-76	Filed petition for rehearing w/pfs
9- 3-76	Filed order denying petition for rehearing (& in 76-4009, 76-4042, 76-4043)
9-15-76	Filed order correcting caption (& in 76-4009, 76-4042, 76-4043)
10- 6-76	Filed notice of filing petition for certiorari (SC #76-454)
12-13-76	Filed certified copy of order by Supreme Court granting petition for certiorari